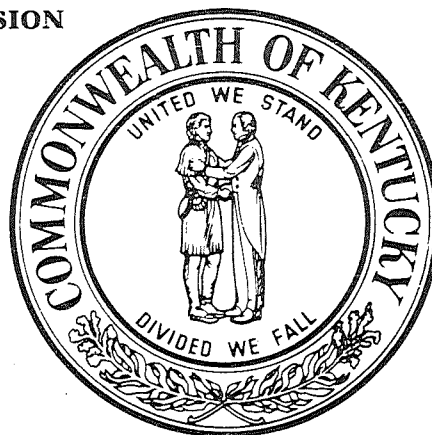


**LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY**

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UNLESS WRITTEN NOTIFICATION OF INTENT TO ATTEND A PUBLIC HEARING IS RECEIVED BY THE PROMULGATING AGENCY AT LEAST FIVE (5) DAYS BEFORE THE HEARING DATE, THE HEARING MAY BE CANCELLED.

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee will be held on September 10 and 11, 1984. For information concerning this meeting, call 502-564-8100, ext. 535.

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Public Hearings

The administrative body shall schedule a public hearing on proposed administrative regulations, proposed amendments to administrative regulations, and proposed repeal of administrative regulations to be held not less than twenty nor more than thirty days following publication of the administrative regulation. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

This information shall be published in the *Administrative Register* at the same time as the initial publication of the administrative regulation. Any person interested in attending the hearing must submit written notification of such to the administrative body at least five days before the scheduled hearing. If no written notice is received at least five days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler immediately by telephone of the cancellation with a follow-up letter and the Compiler will note upon the face of the original administrative regulation that the hearing was cancelled.

No transcript of the hearing need be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

If an administrative body has several proposed administrative regulations published at the same time, the proposed administrative regulations may be grouped at the convenience of the administrative body for purposes of hearings.

Emergency Regulations Now In Effect

(NOTE: Emergency regulations expire 90 days
from publication or upon replacement.)

STATEMENT OF EMERGENCY

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states which wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season. An ordinary administrative regulation will not suffice because insufficient time to accomplish the required state procedures during the short period between promulgation of federal hunting regulations and the opening of the hunting season will preclude timely effectiveness of the administrative regulation. The emergency regulation will be replaced by an ordinary administrative regulation.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky

CARLE E. KAYS, Commissioner
Department of Fish and Wildlife

TOURISM CABINET

Department of Fish and Wildlife Resources

301 KAR 2:044E. Taking of migratory wildlife.

RELATES TO: KRS 150.010, 150.015, 150.300, 150.305, 150.320, 150.330, 150.340, 150.360

PURSUANT TO: KRS 13A.350[13.082]

EFFECTIVE: August 1, 1984

NECESSITY AND FUNCTION: In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply.

Section 1. Seasons: (1) Doves: September 1 through October 31; December 1 [3] through December 9 [11].

(2) Woodcock: October 1 through December 4.

(3) Common snipe: October 1 through December 4.

(4) Experimental September duck: September 12 [7] through September 16 [11].

Section 2. Limits:

Species	Bag Limits	Possession Limits
Doves	12	24
Woodcock	5	10
Common snipe	8	16
Experimental September duck, wood duck, teal and other ducks	*4	*8

*Daily bag limit is four (4) ducks, no more than one (1) of which may be a species other than teal or wood duck, and the possession limit is double the daily bag limit.

Section 3. Bag and Possession Limits: (1) After two (2) or more days of shooting, possession limits apply to transporting, but do not permit a double bag limit in the field.

(2) The above species (except doves) dressed in the field, or being prepared for transportation, must have one (1) fully feathered wing or head attached to the bird for identification purposes. [For further information on the above species, consult Title 50, Code of Federal Regulations, Part 20.]

Section 4. Shooting Hours: (1) Doves: From eleven (11) o'clock a.m. until sunset.

(2) Common snipe and woodcock: from one-half (½) hour before sunrise to sunset.

(3) Experimental September duck: from one-half (½) hour before sunrise to sunset.

Section 5. Free Permit for Experimental September Duck Season. Persons hunting during the experimental September duck season should obtain a free permit from any conservation officer or other authorized agents before hunting. The free permit contains a request for harvest information to be furnished on a self-address, stamped post card.

Section 6. Falconry Hunting. The wildlife species listed in this regulation may be pursued and taken by a licensed falconer with any legal hunting raptor during the regular hunting dates listed for each species. All bag and possession limits apply to falconry hunting.

Section 7. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this regulation apply to the following areas:

(1) Ballard Wildlife Management Area, located in Ballard County:

(a) Doves: September 1 through October 14 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.

(b) Woodcock and snipe: Seasons closed.

(2) West Kentucky Wildlife Management Area, located in McCracken County:

(a) Doves: September 1 through October 16 only.

(b) Woodcock and snipe: Hunting permitted on tracts 2, 3, 6, and 7 only.

(3) Central Kentucky Wildlife Management Area, located in Madison County:

(a) Doves: September 1 through October 16 only.

(b) Woodcock and snipe: Seasons closed.

(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties:

(a) Doves: September 1 through September 30 and December 1 [3] through December 9 [11] only.

(b) Woodcock and snipe: December 1 through December 4 only.

(5) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties:

(a) Doves: September 1 through September 21 [23], September 22 [24] through October 31 [30] as announced by Fort Campbell Hunting and Fishing Unit, and December 1 [3] through December 9 [11] only. Hunting permitted during these periods in designated areas only.

(b) Shooting hours for doves: from twelve (12) o'clock noon until sunset.

(c) Woodcock and snipe: November (22) [24] through November 30 and December 1 through December 2 on selected areas only.

(6) Closed Areas: The hunting of doves, woodcock, common snipe, and ducks is prohibited on the following wildlife management areas: that portion of Grayson Lake Wildlife Management Area [located in Carter and Elliott Counties] east of the Little Sandy River and Bruin Creek portions of Grayson Lake; Beaver Creek Wildlife Management Area, including all private inholdings, located in Pulaski and McCreary Counties; Robinson Forest Wildlife Management Area, located in Breathitt, Perry, and Knott Counties; Redbird Wildlife Management Area, including all private inholdings, located in Leslie and Clay Counties; Dewey Lake Wildlife Management Area, located in Floyd County; Cane Creek Wildlife Management Area, including all private inholdings, located in Laurel County; Mill Creek Wildlife Management Area, located in Jackson County.

CARL KAYS, Commissioner
ROBERT C. WEBB, Chairman
G. WENDALL COMBS, Secretary

APPROVED BY AGENCY: July 27, 1984

FILED WITH LRC: August 1, 1984 at 2:15 p.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Surface Mining
Reclamation and Enforcement

405 KAR 10:035E. Procedures, criteria and hearing requirements for cancellation of surety bonds after notice of non-compliance issued for failure to maintain contemporaneous reclamation.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.068, 350.151, 350.465

PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.151, 350.465

EFFECTIVE: July 16, 1984

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part provides authority for the cabinet to approve the cancellation of surety bonds upon notice by the surety when a notice of non-compliance is issued for failure to maintain contemporaneous reclamation. This regulation specifies the procedures and criteria for surety bond cancellation. This regulation also sets forth certain notice and hearing requirements relating to surety bond cancellation.

Section 1. Procedures for Request for and Notice of Surety Bond Cancellation. (1) Notice of intent to cancel.

(a) After the issuance, on or after July 13, 1984, of a notice of non-compliance for failure to maintain contemporaneous reclamation, the surety obligated on the per-

formance bond for the permit or any increment thereof may send notice to the insured and to the department, of its intent to request cancellation of bond coverage on any area disturbed after thirty (30) days from the effective date of the surety's notice of intent to cancel, if the violation is not abated.

(b) The notice of intent to cancel shall be sent by certified mail, return receipt requested, to the insured, and a copy to the Director of the Division of Field Services, of the department. The effective date of the notice of intent to cancel shall be the date on which it is received by the insured.

(c) The notice of intent to cancel shall be signed by an officer or director of the surety company and contain at a minimum the following:

1. Name of permittee;
2. Permit number and increment number, if applicable;
3. Name of surety;
4. Bond number and amount;
5. Date of issuance of notice of non-compliance and non-compliance number; and
6. Date of notice of intent to cancel.

(2) Notice of cancellation.

(a) If the surety elects to cancel pursuant to its notice of intent to cancel, the surety shall send a notice of cancellation to the insured by certified mail, return receipt requested. A copy of said notice shall also be sent to the Director of the Division of Field Services by certified mail, return receipt requested.

(b) The notice of cancellation shall be on a form specified by the cabinet and shall be sworn to by an officer or director of the surety, notarized and contain at a minimum the following:

1. Name of permittee and permit number;
2. Increment number, if applicable;
3. Name of surety and bond number;
4. Date of issuance of notice of non-compliance and non-compliance number;
5. Date the notice of intent to cancel was received by permittee;
6. Date of notice of cancellation;
7. A statement that the violation has not been abated within thirty (30) days of the effective date of the notice of intent to cancel;
8. A statement that the surety acknowledges that it will not be relieved of its liability for areas disturbed prior to the department's approval of cancellation; and
9. A request for the cabinet to approve the notice of cancellation.

(c) The notice of cancellation shall become effective upon the cabinet's approval.

(3) Cabinet approval of cancellation. Within thirty (30) days of receipt of the notice of cancellation, the cabinet shall approve the surety's notice of cancellation in writing, only if the following conditions exist:

(a) The violation has not been abated by the permittee; and

(b) The surety has complied with the notice requirements of subsection (1) and (2) of this section; and

(c) The cabinet has:

1. Revoked the permit by order of the commissioner of the department; or
2. Deleted the area subject to the cancellation by order of the commissioner of the department; or
3. Accepted and approved a substitute bond submitted by the permittee.

Section 2. Procedures for Permit Revocation or Dele-

tion of the Areas Subject to Cancellation. The cabinet shall by order delete the areas subject to bond cancellation or revoke the permit for the entire permit area within thirty (30) days from receipt of the surety's notice of cancellation, without prior hearing, unless an acceptable substitute bond has been submitted to the cabinet.

(1) The order shall be issued by the commissioner of the department, without prior hearing, based upon information available to the cabinet and the surety's notice of cancellation.

(2) The permittee may request a hearing on the order of the commissioner pursuant to KRS 224.081(2).

(a) A hearing requested pursuant to KRS 224.081(2) shall be requested within thirty (30) days of entry of the order of the commissioner.

(b) The order of the commissioner shall be affirmed unless the permittee can affirmatively establish that bond coverage was not cancelled and the violation was abated at the time of entry of the commissioner's order, or that substitute bond was approved by the cabinet.

(c) Within thirty (30) days after entry of the order of the commissioner, the order may be rescinded if the permittee can demonstrate that a substitute bond has been accepted and approved by the cabinet and the violations have been abated.

Section 3. Procedures for Bond Release or Forfeiture after Approval of Cancellation. (1) The cabinet shall not release any portion of a bond for a permit area or increment thereof, including but not limited to undisturbed acreage, after cancellation, unless and until all disturbed areas on the permit or increment have been reclaimed to the standards set forth in KRS Chapter 350 and the regulations promulgated pursuant thereto, or substitute bond has been filed and approved by the cabinet and the substitute surety has expressly assumed liability for all disturbed areas of the permit or increment.

(2) In the event of bond forfeiture the entire bond held by the cabinet shall be forfeited upon order of the secretary pursuant to KRS Chapter 350 and the regulations pursuant thereto.

Section 4. Statement of Emergency. (1) The 1984 General Assembly amended KRS Chapter 350 to allow the cabinet to approve cancellation of surety bonds by sureties obligated on performance bonds when the mining operator has been issued a notice of non-compliance for failure to maintain contemporaneous reclamation. This statutory provision becomes effective on July 13, 1984 and this regulation establishes the procedures the cabinet will utilize to implement the statute.

(2) An ordinary administrative regulation will not suffice because sureties will be seeking approval of bond cancellation as soon as the statute becomes effective. This regulation is needed immediately to establish procedures for approving requests for bond cancellation.

(3) This emergency regulation will be replaced by an ordinary administrative regulation.

CHARLOTTE E. BALDWIN, Secretary

MARTHA LAYNE COLLINS, Governor

APPROVED BY AGENCY: July 11, 1984

FILED WITH LRC: July 16, 1984 at 11 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement**

405 KAR 16:020E. Contemporaneous reclamation.

RELATES TO: KRS 350.062, 350.093, 350.100, 350.110, 350.405, 350.410, 350.435, 350.450, 350.465

PURSUANT TO: KRS [13.082,] 350.028, 350.093, 350.100, 350.465

EFFECTIVE: July 16, 1984

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for keeping reclamation operations, including backfilling, grading, soil preparation and revegetation, contemporaneous with mining operations.

Section 1. General. Reclamation operations, including but not limited to, backfilling, grading, topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, mulching and revegetation of all land that is disturbed by surface mining activities, shall occur as contemporaneously as practicable with mining operations and in accordance with this regulation.

Section 2. Backfilling and Grading. Backfilling and grading operations shall proceed as concurrently with mining operations as possible and in accordance with the requirements of this section, except that specific time and distance criteria set forth in the approved plan for backfilling and grading shall take precedence over corresponding criteria in this regulation. The approved backfilling and grading plan may specify time and distance criteria less restrictive than those set forth in this regulation when the permittee has demonstrated through detailed written analysis in the permit application that such other criteria are essential to the proposed mining and reclamation operations, and the cabinet has determined that use of such criteria will not likely cause adverse environmental impacts. As used in this section, "initial surface disturbance" means the initial excavation for the purpose of removal of topsoil or overburden.

(1) Area mining. Backfilling and grading to approximate original contour on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area, and shall not be more than four (4) spoil ridges behind the pit being mined, with the spoil from the pit being mined being considered the first spoil ridge.

(2) Auger mining. Coal removal in a given location shall be completed within sixty (60) calendar days after the initial surface disturbance at that location. Auger holes shall be sealed as required by 405 KAR 20:030. Backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) days and by not more than 1500 linear feet.

(3) Contour mining. Coal removal in a given location shall be completed within sixty (60) calendar days after the initial surface disturbance at that location. Backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) calendar days and by not more than 1500 linear feet.

(4) Multiple-seam contour mining. When overlapping multiple cuts producing a benched highwall are made to

remove more than one (1) coal seam at a given location, backfilling and grading at that location shall be completed within sixty (60) calendar days after removal of the last coal seam at that location and shall follow the advancing cut of the last coal seam by not more than 1500 feet. Removal of all coal seams shall proceed as concurrently as possible and in a timely manner, in order to minimize the time period in which disturbed areas are exposed prior to reclamation.

(5) Combined contour mining and auger mining. Coal removal by contour mining at a given location shall be completed within the time frame specified in subsection (3) or (4) of this section as appropriate. Auger mining at a given location shall be completed within thirty (30) calendar days after coal removal by contour mining at that location. Sealing of auger holes and backfilling and grading shall then be completed as required in subsection (2) of this section.

(6) Mountaintop removal. Backfilling and grading on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area.

(7) All final backfilling and grading shall be completed before equipment necessary for backfilling and grading is removed from the site.

Section 3. Soil Preparation and Revegetation. (1) When backfilling and grading have been completed on an area, the required topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, and mulching of that area shall be completed as soon as possible in a manner consistent with the approved plans for topsoil handling and revegetation and in accordance with 405 KAR 16:200, Section 3.

(2) The time allowed for soil preparation and revegetation pursuant to subsection (1) may exceed thirty (30) calendar days only when specifically authorized in the approved plans for topsoil handling and revegetation or when authorized pursuant to Sections 4 or 5 of this regulation.

Section 4. Deferments. (1) The cabinet [department] may allow a permittee to defer the time criteria for coal removal and contemporaneous reclamation requirements on specified areas if the permittee can demonstrate that said deferment is necessary to address at least one (1) of the following:

(a) Adverse condition including weather, labor, and other conditions clearly beyond the permittee's control.

(b) Combined surface and underground mining activities subject to the provisions of 405 KAR 8:050, Section 7 and 405 KAR 20:020[, and other mining operations pursuant to KRS 350.080].

(c) Coal marketing problems.

(2) Application for a deferment pursuant to this section shall be in the form prescribed by the cabinet. Approval of the deferment request shall be made in writing. The approval shall state that the deferment is justified and that no environmental damage will occur during the period of deferment.

(a) Application for a deferment pursuant to paragraph (a) of subsection (1) for adverse conditions shall be made in writing and shall include documentation of the adverse conditions beyond the operator's control and demonstration of impossibility of conducting coal removal and contemporaneous reclamation in a timely manner due to those conditions. The application shall be filed at the appropriate regional office of the department. Upon a successful demonstration that such conditions exist, the regional administrator may grant a reclamation deferment

for a maximum of thirty (30) days, on a form provided by the department. At least seven (7) days prior to the expiration of the deferment, the permittee may request, in writing, an additional extension, again stating the reason for the request and providing any appropriate additional documentation. The regional administrator may renew the original extension once upon such request, such renewal not to exceed thirty (30) days. Any need for additional time must be demonstrated to the Division of Field Services in Frankfort by written request. Such request must initially be submitted to the regional office at least two (2) weeks prior to the expiration of the renewed deferment. Upon recommendation of the regional administrator, the director of the Division of Field Services shall issue his decision on or before expiration of the deferment.

(b) Application for a deferment pursuant to paragraph (b) of subsection (1) for combined surface and underground mining shall be made according to 405 KAR 8:050, Section 7.

(c) Application for a deferment pursuant to paragraph (c) of subsection (1) for coal marketing problems shall be made according to Section 5 of this regulation.

(3) The applicant has the burden of establishing the need for a deferment. The applicant must demonstrate that reclamation on the site is contemporaneous as of the date of the request for deferment and that distance requirements for contemporaneous reclamation will be met during the period of deferment. The permittee shall continue to comply with the time limits of the coal removal and contemporaneous reclamation requirements until the deferment is issued.

(4) [(3)] Reclamation deferments may be approved for a period reasonably related to the specified conditions justifying the deferment. The deferral shall not extend beyond the expiration date of the permit and in no event shall the aggregate deferral period exceed thirty (30) months, except where approved combined mining is being carried out under subsection (1)(b) of this section.

(5) [(4)] The cabinet shall periodically reexamine and update the amount of the bond on the permit area so that the amount of the bond is sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture.

Section 5. Additional Requirements for Deferments for Coal Marketing Problems. Upon written application conforming to the requirements of the statutes and regulations, the cabinet may grant a deferment of coal removal and contemporaneous reclamation for a period not to exceed thirty (30) months pursuant to KRS 350.093.

(1) Application requirements.

(a) An applicant for a deferment of coal removal and contemporaneous reclamation shall submit an application on a form specified by the cabinet. An application shall contain at least the following:

1. A demonstration of the need for the deferment, including documentation of the coal marketing problem.

2. A plan consisting of a detailed narrative description of the method by which the applicant shall conform to each of the performance standards specified in subsection (2) of this section (hereinafter "plan").

3. A detailed schedule for implementation of each of the performance standards of subsection (2) of this section (hereinafter "schedule"), which may not extend beyond thirty (30) days from the issuance by the cabinet of a deferment from coal removal and contemporaneous reclamation.

4. An itemized estimate of the total cost of reclamation

of the area proposed for deferment. The estimate shall, at a minimum, include calculations and supporting data demonstrating the volume of spoil necessary for backfilling and grading all open pits and highwalls, the cost of backfilling those pits and highwalls, the cost of final grading and revegetation of the entire disturbed area, and the cost of moving necessary reclamation equipment to the job site.

5. Written consent of the surety for the deferment where the permit area or increment is covered by a surety bond.

(b) The applicant shall place an advertisement in the newspaper of largest bona fide circulation in each county in which the permit is located. The advertisement shall be published within ten (10) days after the date the application is submitted to the cabinet and shall contain, at a minimum, the location of the area for which coal removal and contemporaneous reclamation are proposed to be deferred, the reason for which the deferment is sought, and the duration of the requested deferment. The advertisement shall also indicate that the deferment shall not exceed six (6) months initially, but may be renewed for additional six (6) months periods up to a maximum of thirty (30) months. The applicant shall submit proof of the advertisement to the cabinet within fifteen (15) days after application for the deferment. The application shall not be deemed complete until such proof is submitted.

(c) The applicant shall also notify, in writing, the owners of the surface of the permit area and adjacent areas as listed on the permit application. The applicant shall provide proof of such notice to the cabinet. The application shall not be deemed complete until such proof is submitted. Within five (5) days after receipt of a complete application, the cabinet shall notify those other persons, if any, who it determines to have an interest which is or may be adversely affected by the proposed deferment.

(d) Any person with an interest which is or may be adversely affected may file written comments and objections to the application for a deferment within ten (10) days after receipt of the written notice or publication of the newspaper notice, whichever is later.

(e) Upon receipt of the application, the cabinet shall examine the data and calculations submitted pursuant to subsection (1)(a)4 of this section and shall cause an inspection of the area subject to the proposed deferment to be made by an authorized agent of the cabinet. Based upon the data supplied and the inspection, the Division of Permits of the cabinet shall determine whether the existing bond for the entire permit or increment is sufficient for the cabinet to completely reclaim the entire disturbed area of the permit or increment at the expiration of the deferment. If the existing bond is insufficient, then the cabinet shall require, prior to approving the deferment, that the applicant file such additional bond as is determined by the cabinet to be sufficient for the cabinet to completely reclaim the disturbed area.

(f) The cabinet shall consider the application, any other submittals from the applicant and any comments received from the public, and shall render a final decision on the application within thirty (30) days of receipt of the complete application. If the cabinet determines that the applicant has satisfied the requirements for a deferment from coal removal and contemporaneous reclamation contained in KRS 350.093(2) and in this regulation, then the cabinet shall grant a deferment to the applicant for a period not to exceed six (6) months. Upon approval by the cabinet, the plan and schedule proposed by the applicant and any conditions imposed on the approval by the cabinet shall become conditions of the permit.

(2) Performance standards. Each permittee subject to a deferment shall, at a minimum:

(a) Complete final reclamation including backfilling, grading, topsoiling and revegetation on all disturbed areas; provided, however, that those areas of the pit, work area, excess spoil disposal areas, topsoil storage areas, and access road necessary to allow resumption of coal extraction without redisturbance of finally reclaimed areas may be exempted from this requirement for the duration of the deferment. In order to meet this requirement, the permittee may be required to reclaim closer to the pit than the distance limits specified in the contemporaneous reclamation regulation.

(b) Mulch or establish quick growing temporary vegetation, or both, on all areas exempted under paragraph (a) of this subsection (except for haul road surfaces) such as excess spoil disposal areas, work areas, topsoil storage areas, and all other areas which have been cleared of vegetation, to the extent technically practicable to achieve erosion control or stability as determined by the cabinet. The permittee shall maintain the cover on all such areas to minimize erosion throughout the deferment period.

(c) Acid- or toxic-producing spoil shall not be left exposed but shall be covered or treated in accordance with Section 3 of 405 KAR 16:190 and 405 KAR 18:190.

(d) Supplemental sediment control measures such as straw dikes and fabric filter fences may be required by the cabinet on a case-by-case basis to minimize additional contributions of sediment to the stream flow or runoff.

(e) Where accumulation of water in the pit may adversely impact the hydrologic balance, public health and safety or the environment, the cabinet shall require such measures as are necessary to minimize adverse impacts. These may include but are not limited to such measures as:

1. Providing drainage from the pit to prevent breaching of the undisturbed berm.

2. Pumping the water to a treatment facility when accumulation of acid or toxic water in the pit may result in contamination of the ground water.

(3) Deferment implementation.

(a) The permittee shall implement the terms of the approved plan within the time schedule approved by the cabinet and consistent with this regulation.

(b) Except as expressly modified by the approved plan, schedule, and conditions in the deferment approval, the permittee shall comply with all of the requirements of the regulations and the permit conditions which would apply to the operation had the deferment not been granted. These requirements include but are not limited to the following:

1. All discharges of water from the permitted area shall be continually treated to meet the applicable effluent limitations.

2. All water quality monitoring and reporting otherwise required shall continue.

3. All diversion ditches, sedimentation ponds, haul road drainage ditches and culverts, etc., shall be rehabilitated as necessary and continually maintained to comply with the applicable performance standards and with the designs approved in the permit. Sediment shall be removed from the sedimentation ponds when the design sediment storage volume has filled with sediment.

4. Haul road maintenance, such as grading, replacement of durable surface material, and cleaning out of ditches and culverts, shall be continually performed as necessary to comply with the performance standards and the approved permit and to minimize erosion.

(4) Expiration and renewal.

(a) A deferment from coal removal and contemporaneous reclamation shall expire six (6) months after the date of issuance of the deferment by the cabinet. A deferment from coal removal and contemporaneous reclamation may be renewed upon written application for a period of no more than six (6) months upon a showing of need for additional time, and upon a showing that the area subject to deferment is in compliance with the requirements of the regulations, the permit, and the terms of the deferment. The cabinet shall inspect the area subject to deferment prior to approval of any renewal.

(b) Regardless of the reasons for the deferment, no deferments or subsequent renewals shall be granted beyond the maximum aggregate period of thirty (30) months for any permit area, including any deferment periods issued for adverse conditions. At the expiration of the thirty (30) month aggregate period, a permittee shall not be granted any additional deferments or renewals unless the permittee can demonstrate that it has conducted twelve (12) months of continuous active coal removal from the permit area after the expiration of the thirty (30) month aggregate period, it has completed reclamation of all previously deferred areas in the permit area, and it otherwise meets all requirements for a deferment. For the purpose of this paragraph, "completed reclamation" means completion of reclamation phase I as defined by 405 KAR 10:040, Section 2(4)(a).

(c) The deferment shall terminate upon resumption of coal extraction activities on the permit area subject to deferment.

(5) Enforcement and revocation.

(a) The cabinet shall inspect the area subject to deferment at least once each month on the average, during the routine partial and complete inspections made of the permit area. Upon each inspection, the inspector shall note under the "comments" section of the Mine Inspection Report form whether the area subject to deferment meets the conditions of the deferment approval, including the plan and schedule.

(b) In the event that the inspection shows that a violation of the conditions of the deferment or of the regulations or of the conditions of the permit is occurring on the area subject to deferment, or is casually related to the area subject to deferment, then the cabinet shall issue a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance. If the permittee fails to abate the violation within the time for abatement, or any extension thereof, established by the cabinet, then the cabinet shall revoke the deferment in addition to other enforcement actions required by Title 405, Chapters 7 through 24.

Section 6. Statement of Emergency. (1) These amendments incorporate changes in KRS Chapter 350 made by the 1984 General Assembly and the substance of the fully executed Settlement Agreement entered on or about May 18, 1984, in Civil Action No. 83-35 in U.S. District Court for the Eastern District of Kentucky. The Settlement Agreement states that its provisions shall be implemented by the cabinet as a matter of policy and where its provisions require changes in the regulations, the cabinet shall propose changes consistent with KRS Chapter 13, the intent being to implement the terms of the Settlement Agreement as quickly as possible. However, KRS Chapter 13A now would prohibit the cabinet from implementing the agreement as a mat-

ter of policy. Therefore, in order to comply with the Settlement Agreement in a timely manner, these amendments must be implemented by emergency regulation.

(2) An ordinary administrative regulation will not suffice because failure to implement the terms of the Settlement Agreement prior to the time it would take to complete the process of adoption may place the cabinet and its personnel in contempt of the U.S. District Court.

(3) This emergency regulation will be replaced by an ordinary administrative regulation.

CHARLOTTE E. BALDWIN, Secretary
MARTHA LAYNE COLLINS, Governor

APPROVED BY AGENCY: July 11, 1984

FILED WITH LRC: July 16, 1984 at 11 a.m.

STATEMENT OF EMERGENCY

Under KRS 211.964 the administrative body is required to implement this regulation as enacted by the 1984 General Assembly in House Bill 493. Therefore, in order for Emergency Medical Technicians to continue to function in accordance with KRS 211.960, the Cabinet for Human Resources needs to implement this emergency regulation to extend current periods of certification. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky

E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES Department for Health Services

902 KAR 13:100E. Emergency extension of certifications.

RELATES TO: KRS 211.964

PURSUANT TO: KRS 211.964

EFFECTIVE: August 2, 1984

NECESSITY AND FUNCTION: KRS 211.964 was amended by 1984 House Bill 493 to delete the necessity for recertification examinations for emergency medical technicians and replaces that requirement with a requirement for in-service training and continuing education. This regulation is necessary to provide currently certified emergency medical technicians with the time necessary to comply with the provisions of the new amendments to KRS 211.964.

Section 1. The period of certification of emergency medical technicians whose certifications expire between July 1, 1984 to December 31, 1985 is hereby extended to December 31, 1985. Any certification as an emergency medical technician not falling within these dates is not affected by this regulation.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: July 30, 1984

FILED WITH LRC: August 2, 1984 at 10 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will not be replaced by an ordinary administrative regulation because activities under this component will be completed prior to expiration of the effective date of this emergency regulation.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management and Development

904 KAR 2:115E. Eligibility, criteria for home energy assistance program.

RELATES TO: KRS 194.050

PURSUANT TO: KRS 194.050

EFFECTIVE: July 20, 1984

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by P.L. 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the eligibility and benefits criteria for each of *three (3) [two (2)]* components of energy assistance, regular, [and] crisis, and *emergency summer aid* under the Home Energy Assistance Program (HEAP).

Section 1. Application. Each household requesting assistance shall be required to complete an application and provide such information as may be deemed necessary to determine eligibility and benefit amount in accordance with the procedural requirements prescribed by the cabinet.

Section 2. Definitions. Terms used in HEAP are defined as follows:

(1) "Principal residence" is that place where a person is living voluntarily and not on a temporary basis; the place he/she considers home; the place to which, when absent, he/she intends to return; and such place is identifiable from other residences, commercial establishments, or institutions.

(2) "Energy" is defined to include electricity, gas, and any other fuel such as coal, wood, oil, bottled gas, etc., that is used to sustain reasonable living conditions.

(3) "Household" means any individual or group of individuals who are living together as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(4) "Economic unit" is one (1) or more persons sharing common living arrangements.

(5) A "fully vulnerable household" is any household living in non-subsidized housing which pays all energy costs directly to the energy provider or any household which rents non-subsidized housing whose energy costs are included in the rent payment.

(6) A "partially vulnerable household" is any household in subsidized housing which pays energy costs directly to the provider or whose energy costs are included in the rental payment.

(7) "Regular component" is that portion of benefits reserved as energy assistance for heating for households containing at least one (1) member who is elderly (age sixty (60) or older) or receiving benefits on the basis of 100 percent disability and who are fully vulnerable.

(8) "Crisis component" is that portion of benefits reserved for use as emergency energy assistance after the regular component is terminated for fully or partially eligible households in emergency or crisis situations.

(9) "Emergency summer aid component" is that component administered by local organizations under contract with the cabinet to provide fans or air conditioners to eligible households in need due to extreme heat.

Section 3. Eligibility Criteria. (1) A household must meet the following conditions of eligibility for receipt of a HEAP payment under the regular, and crisis components:

(a) The household must be fully vulnerable for energy cost or, for the crisis component, fully or partially vulnerable.

(b) For purposes of determining eligibility, the amount of continuing and non-continuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application will be considered. Income received on an irregular basis will be prorated.

(c) Gross income for the calendar month preceding the month of application must be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from consideration as income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (WIN and JTPA) normally disregarded in AFDC, federal payments or benefits which must be excluded according to federal law, and Supplemental Medical Insurance premiums.

Income Scale

Family Size	Monthly	Yearly
1	\$500	\$6,000
2	600	7,200
3	700	8,400
4 or more	800	9,600

(d) The household must have total liquid assets at the time of application of not more than \$5,000. Excluded assets are cars, household or personal belongings, principal residence, cash surrender value of insurance policies, and prepaid burial policies.

(e) Applicants for the crisis component must attest that an immediate need for energy exists because the household is financially incapable of meeting their energy costs at the time of application or within fifteen (15) days. The thirty (30) day extension of service prior to energy cut-off granted by Public Service Commission regulations does not affect eligibility for the crisis component.

(2) Households are eligible to receive benefits under either the regular or crisis component and the emergency summer aid component.

(3) For the emergency summer aid component, a household must meet the same income and assets criteria contained in subsection (1)(b) through (d) of this section. Households with members who have health/medical problems or who are aged, blind, or disabled shall receive priority.

Section 4. Benefit Levels. Payment amounts for the regular and crisis components are set at a level to serve a maximum number of households while providing a reasonably adequate payment relative to energy costs. The highest level of assistance will be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.

(1) Payments to fully vulnerable eligible households will be made for the full benefit amount based on type of energy for heating, monthly household income, and household size as specified in the following benefit scales. Payments to partially vulnerable households shall be one-half (H) of the amount which is paid to a fully vulnerable household as specified in the following benefit scales.

Benefit Scales
Fully Vulnerable Households

Scale A.

Energy Sources: LP Gas (Propane), Fuel Oil, Electricity, Kerosene

Monthly Household Income	Payment Amount	
	Household Size 1 and 2	Household Size 3 or more
\$ 0-300	\$275	\$300
301-600	238	263
over 600	—	225

Scale B.

Energy Sources: Natural Gas, Coal, Wood

Monthly Household Income	Payment Amount	
	Household Size 1 and 2	Household Size 3 or more
\$ 0-300	\$225	\$250
301-600	188	213
over 600	—	175

(2) If the cabinet receives only a percentage of the federal funds authorized by Congress, benefits to eligible households under the regular or crisis components may be reduced proportionately.

(3) Benefits to eligible households under the emergency summer aid component shall be in the form of fans or air conditioners, not to exceed \$325 total benefit value per eligible household.

Section 5. Benefit Delivery Methods. Benefits shall be provided to eligible households as follows:

(1) Payment authorization under the regular and crisis components is of two (2) types.

(a) If the recipient utilizes an energy provider who has a continuous billing cycle, payment is authorized by a two (2) party check made payable to the provider and the recipient, whenever feasible.

(b) When there is no continuous billing cycle or heating is included as an undesignated portion of rent, payment

shall be made by a check payable to the recipient and the provider/landlord whenever feasible.

(c) When a two (2) party check is not feasible, the recipient shall sign an affidavit prior to receipt of funds stating that benefits received under HEAP shall be utilized solely for home energy.

(2) Under the regular and crisis components, at the recipient's discretion, the total benefit may be made in separate authorizations to facilitate payment to more than one (1) provider (e.g., when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments may not exceed the maximum for the primary source of energy for heating. The household will decide how to divide payment if more than one (1) provider is used.

(3) *For the emergency summer aid component, no direct cash payments shall be made to the recipient. Benefits shall be provided to eligible households by the contracting agency.*

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055, Hearings and appeals.

Section 7. Time Standards. The cabinet shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP:

(1) Applications for the regular component shall be accepted beginning December 5, 1983, and ending no later than December 16, 1983, at the close of business.

(2) Applications for the crisis component shall be accepted beginning January 16, 1984.

(3) Application shall be processed in the order taken until funds are expended. HEAP regular and crisis components shall be terminated by the secretary when actual and projected component expenditures have resulted in utilization of available funds or March 31, 1984, whichever comes first.

(4) HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation should additional federal funds be made available for that purpose.

(5) *The emergency summer aid component may be im-*

plemented by the contracting agency on July 16, 1984. Benefits shall be provided until funds are exhausted or September 15, 1984, whichever comes first.

Section 9. Allocation of Funds. (1) Up to fifteen (15) percent of the total HEAP allocation shall be reserved for weatherization assistance.

(2) Up to \$250,000 shall be reserved for use if special circumstances develop related to winter heating or shelter needs. If a determination is made that special circumstances will not be present, the funds shall be utilized for benefits in the crisis components.

(3) *Up to \$700,000 shall be reserved for administration and implementation of the emergency summer aid component.*

(4) [(3)] Remaining benefit funds available under Public Law 97-35 shall be reserved for the regular and crisis components.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy provided to eligible recipients is required to comply with the following:

(1) Reconnection of utilities and/or delivery of fuel must be accomplished upon certification for payment;

(2) The household must be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the HEAP payment, the customer must be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated differently than households not receiving benefits; and

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of recipient households on the basis of receipt of this payment.

[Section 11. Provisions of this regulation shall be effective January 16, 1984.]

JACK F. WADDELL, Commission
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: July 18, 1984

FILED WITH LRC: July 20, 1984 at 3 p.m.

Amended Regulations Now In Effect

CABINET FOR HUMAN RESOURCES Department for Health Services As Amended

902 KAR 4:090. Lead poisoning prevention.

RELATES TO: KRS 211.900, 211.905, 211.994

PURSUANT TO: KRS 194.050, 211.090, 211.901(5)

EFFECTIVE: August 7, 1984

NECESSITY AND FUNCTION: KRS 211.901(6) provides that local boards of health may by the adoption of local regulations establish programs for the prevention, screening, diagnosis and treatment of lead poisoning; provided that such regulations are the same as the provisions of KRS 211.900 to 211.905 and 211.994 and the regulations promulgated by the Secretary for Human Resources pursuant to subsection (5) of KRS 211.901. The function of

this regulation is to set forth the criteria that must be included in local board of health regulations relating to the prevention, screening, diagnosis and treatment of lead poisoning.

Section 1. Definitions. As used in this regulation: (1) "Board" shall mean the board of health or any county, city-county or district including the Louisville and Jefferson County Board of Health and the Lexington-Fayette Urban-County Board of Health.

(2) "Department" shall mean the department of health of any county, city-county or district health department including the Louisville and Jefferson County Health Department and the Lexington-Fayette Urban-County Health Department.

(3) "Director" shall mean the chief administrative officer of any county, city-county or district health depart-

ment including the Louisville and Jefferson County Health Department and the Lexington-Fayette Urban-County Health Department.

(4) "Cabinet" shall mean the Cabinet for Human Resources.

(5) "Secretary" shall mean the Secretary for Human Resources or his authorized representative.

(6) "Lead based substance" shall mean any substance containing more than six-hundredths (0.06) percent lead by weight of nonvolatile content as provided in KRS 217.801.

(7) "Dwelling" shall mean any structure, all or a part of which is designed for human habitation.

(8) "Dwelling unit" shall mean any room or group of rooms or other interior areas of a dwelling designed or used for human habitation.

(9) "Owner" shall mean any person who, alone, jointly, or severally with others, has legal title to, charge, care, or control of any dwelling or dwelling unit as owner, agent of the owner, or as executor, administrator, trustee, conservator or guardian of the estate of the owner.

(10) "Occupant" shall mean any person living, sleeping, cooking, eating in or having actual possession of a dwelling unit or rooming unit.

(11) "Elevated blood lead level" shall mean a confirmed concentration of lead on whole blood of twenty-five (25) micrograms (ug) per deciliter (dl) or greater.

(12) "Surface" shall mean the outermost layer or superficial area of the materials of which a dwelling unit is constructed, excluding paint, plaster or putty of the interior or exterior of a dwelling unit, including but not limited to the outermost layer of superficial area of walls, ceilings, floors, stairs, windows, windowsills, window frames, window sashes, doors, door frames, baseboard and woodwork of a dwelling or dwelling unit.

(13) "Exposed surface" shall mean all interior surfaces of a dwelling or dwelling unit and those exterior surfaces of a dwelling or dwelling unit which are readily accessible to children under six (6) years of age, such as stairs, decks, porches, railings, windows, doors and siding. All areas in the vicinity of a dwelling or dwelling unit subject to contamination from flaking or peeling lead based materials are also considered an exposed surface.

(14) "Chewable surface" shall include but not be limited to such surfaces as windowsills, window frames, door frames, handrails, toys, furniture, food utensils and other appurtenances offering a biting surface to a child or other person.

Section 2. Lead Based Paint Health Hazard. (1) Any lead based substance shall be considered a health hazard to children under six (6) years of age if:

(a) Said lead based substance exists in or about a dwelling, dwelling unit, household, school or day care facility in which children commonly reside or visit; and

(b) Said lead based substance is determined to be on any surface, exposed surface or chewable surface and contains more than six-hundredths (0.06) percent lead by weight of nonvolatile content or in excess of seven-tenths (0.7) milligrams per square centimeter of surface when tested by radioisotope x-ray fluorescent analyzer.

(2) Any lead based substance found to be a health hazard under subsection (1) of this section shall be corrected within the time period specified by the director in a written order. Failure to correct the health hazard within the specified time period shall result in the appropriate court action against the owner, operator or occupant for noncompliance unless an extension is granted by the director due to undue hardship.

(3) Correction procedures shall be approved by the director and shall include one (1) or more of the following:

(a) Stripping of the surface to the bare underlying materials which do not contain lead at the unsafe levels.

(b) The covering of such surfaces which contain lead at unacceptable levels with permanently affixed coverings, the surfaces of which are lead free and which with said permanently affixed coverings, are incapable of being readily chewed through, torn from the surface, pierced, or otherwise removed in such manner as to expose the hazardous surface.

Section 3. Inspections. (1) If there is found the presence of flaking, peeling, chipping, or loose paint, plaster, or structural material in or around any building used for housing, specimens of the flaking, chipped or loose paint, plaster or structural material shall be collected to determine whether or not the materials contain lead. In lieu of taking samples, the surface may be tested with an "in situ" analyzer approved by the director.

(2) The chemical determination of the lead content in surface materials may be made by the quantitative measurements of samples of those materials.

(3) The physical determination of the lead content of surface material may be made by nondestructive measurements using radioisotope x-ray fluorescent analyzers (XRF) or other instruments approved by the director.

m(4) When a dangerous level of lead is found in a dwelling, the director may cause to have examined all children under six (6) years of age, and such other children as he may find advisable to examine, residing or who have recently resided in said dwelling. The results of such examinations shall be reported to the director, the affected individual and his parent or legal guardian.

Section 4. Hazard Abatement. (1) When the director determines that the presence of lead based substances in any dwelling or dwelling unit or premises creates a health hazard to children under six (6) years of age, he shall issue a written order to the owner, operator or occupant to eliminate the hazard within a time period not to exceed thirty (30) days [; however, in the sound discretion of the director, additional time may be granted to remove, abate or remedy such condition due to undue hardship]. Methods for compliance shall be in accordance with Section 2 of this regulation.

(2) Upon completion of the correction procedure, an inspection shall be made by the department to determine if the hazard has been satisfactorily eliminated.

(3) In the event the dwelling or dwelling unit or premises in which such are located is vacated by the occupant who occupied same at the time of the issuance of corrective order such dwelling, dwelling unit or premises shall not be let or occupied by any other person until such corrective order is complied with.

C. HERNANDEZ, M.D., Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: June 14, 1984

FILED WITH I.R.C: June 14, 1984 at 4:30 p.m.

**CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
As Amended**

902 KAR 20:190. Rehabilitation agency services.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990(1)(2)

PURSUANT TO: KRS 216B.040(2), 216B.105

EFFECTIVE: August 7, 1984

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides the minimum licensure requirements for the operation and services of rehabilitation agencies.

Section 1. Scope of Operation and Services. A rehabilitation agency is an organization with permanent facilities which provides services designed to upgrade the physical function of handicapped and disabled individuals. The agency shall provide outpatient services in the facility. Outreach services may be provided in other settings such as the patient's home, long term care facilities or schools. A rehabilitation agency must provide physical therapy or speech pathology services and also may provide audiology and occupational therapy.

Section 2. Definitions. (1) "Audiologist" means an individual licensed as an audiologist by the Kentucky Board of Examiners of Speech Pathology and Audiology.

(2) "Audiology aide" means an individual certified as an audiology aide by the Kentucky Board of Examiners of Speech Pathology and Audiology.

(3) "Cabinet" means Cabinet for Human Resources.

(4) "Long term care facility" means those health care facilities in the Commonwealth which are defined by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.

(5) "Occupational therapist" means an individual certified by the American Occupational Therapy Association as an occupational therapist, registered.

(6) "Occupational therapy assistant" means an individual certified by the American Occupational Therapy Association as an occupational therapy assistant.

(7) "Physical therapist" means an individual licensed as a physical therapist by the Kentucky Board of Physical Therapy.

(8) "Physical therapist's assistant" means an individual certified as a physical therapist's assistant by the Kentucky Board of Physical Therapy.

(9) "Speech pathologist" (Speech-language pathologist) means an individual licensed as a speech pathologist by the Kentucky Board of Examiners of Speech Pathology and Audiology.

(10) "Speech pathology aide" means an individual certified as a speech pathology aide by the Kentucky Board of Examiners of Speech Pathology and Audiology.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the operation of the agency and for compliance with federal, state, and local laws pertaining to the operation of the service.

(b) The licensee shall appoint a full-time administrator whose qualifications, responsibilities, authority and accountability shall be defined in writing. The licensee shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall be responsible for the daily management of the facility and provide liaison between the licensee and staff.

(b) The administrator shall keep the licensee fully informed of the conduct of the facility through periodic reports and by attendance at meetings with the licensee.

(3) Administrative records and reports. Administrative reports shall be established, maintained and utilized as necessary to guide the operation measure productivity and reflect the programs of the facility. Such reports shall include:

(a) Minutes of staff meetings, financial records and reports, incident investigation reports and other pertinent reports made in the regular course of business; and

(b) Licensure inspection reports and plans of correction. The facility shall make available in a conspicuous place, a complete copy of every inspection report for the facility received from the cabinet during the previous three (3) years, including the most recent inspection report.

(4) Patient care policies. The licensee shall have written patient care policies to govern the services provided which are established by a group of professionals including at least one (1) physician and at least one (1) qualified therapist (i.e., a physical therapist, occupational therapist, speech pathologist or audiologist). Patient care policies shall be reviewed annually and revised as necessary. These policies shall address:

(a) Admission and discharge;

(b) Physician services;

(c) Patient care plans and methods of implementation;

(d) Care of patients in an emergency;

(e) Infection control;

(f) Clinical records;

(g) Administrative records; and

(h) Program evaluation.

(5) Personnel.

(a) The facility shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services. There shall be written personnel policies which are made available to all employees.

(b) There shall be a written job description for each position which shall be reviewed and revised as necessary.

(c) Current personnel records shall be maintained for each employee which include the following:

1. Name, address and social security number;

2. Evidence of current registration, certification or licensure of personnel;

3. Records of training and experience; and

4. Records of performance evaluation.

(6) Clinical records.

(a) The facility shall have a clinical records service with administrative responsibility for clinical records. A clinical record shall be maintained, in accordance with accepted professional principles, for every patient treated by the facility.

(b) The clinical record shall contain sufficient information to identify the patient, justify the diagnosis(es) and treatment, and document the results accurately. All records shall contain the following information:

1. Identification data and consent forms;

2. Documented evidence of the assessment of the needs of the patient, an appropriate plan of care and the care and services provided;

3. Medical history;
4. Report of physical examinations, if any;
5. Diagnosis;
6. Observation and progress notes;
7. Reports of treatments and clinical findings; and
8. Discharge summary including final diagnosis(es) and prognosis.

(c) Current clinical records and those of discharged patients shall be completed promptly. All entries into the record shall be signed by the person making the entry.

(d) The facility shall have available a sufficient number of regularly assigned employees so that clinical records services may be provided as needed.

(e) All clinical records shall be retained for a minimum of five (5) years from the conclusion of treatment or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is longer.

(f) Provision shall be made for written designation of specific location(s) for the storage of clinical records in the event the facility ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the facility to safeguard both the record and its content against loss, defacement and tampering.

(g) A system of identification and filing to insure the prompt location of a patient's clinical record shall be maintained.

(7) Quality assurance and program evaluation.

(a) The agency shall have procedures which provide for quality assurance and the systematic evaluation of its total program to assure appropriate utilization of services, determine whether the organization's policies are followed in providing services to patients through employees or under a contractual arrangement with others, and to assure that services are provided according to generally accepted professional principles and are designed to meet the specific needs of the patients.

(b) A sample of active and closed clinical records shall be reviewed quarterly by the appropriate health professionals to assure that established policies are followed in providing services.

(c) An evaluation shall be conducted annually of statistical data such as the number of different patients treated, number of patient visits, condition on admission and discharge, number of new patients, number of patients by diagnosis(es), source of referral and total staff days or work hours by discipline.

Section 4. Provision of Services. (1) Physician services.

(a) Patients in need of [physical therapy or] occupational therapy services shall be accepted for treatment only on the order of a physician. *Patients in need of physical therapy services shall be accepted only upon referral from a licensed doctor of medicine, osteopathy, dentistry, chiropractic or podiatry.* All patients referred by a physician shall be seen by the physician at least once every thirty (30) days unless justified and documented by the physician in the patient's clinical record.

(b) For each patient there shall be a written plan of care which indicates anticipated goals and specifies the type, amount, frequency and duration of physical therapy, occupational therapy, speech pathology or audiology services. The plan of care for physical or occupational therapy shall be developed in consultation between the physical therapist or occupational therapist and the *licensed practitioner making the referral* [a physician]. The plan of care for speech or hearing therapy shall be developed by a speech pathologist or audiologist.

(c) The plan of care for patients referred by a physician shall be reviewed by the attending physician once every thirty (30) days or more often, if required, unless justified and documented by the attending physician in the patient's clinical record. The plan of care for all patients shall also be reviewed by the appropriate professional staff once every thirty (30) days or more often, if required, and the indicated action shall be taken.

(d) The attending physician shall be promptly notified of any changes in the patient's condition. If changes are required in the plan of care, such changes shall be approved by the physician and noted in the clinical record.

(e) The facility shall provide for one (1) or more physicians to be available on call to furnish necessary medical care in case of an emergency. A schedule listing the names and telephone numbers of these physicians and the specific days each is on call shall be posted.

(2) Treatment locations. Outpatient physical therapy, occupational therapy, speech pathology, or audiology services are provided on the facility's premises. Outreach services may be provided in other settings such as in the patient's home, long term care facilities or schools.

(3) Physical therapy services.

(a) If offered, physical therapy services shall be provided by or under the direct supervision of a physical therapist either directly or under arrangement with others under terms of a written contract. The number of licensed physical therapists and physical therapy assistants shall be adequate for the volume and diversity of services offered.

(b) The physical therapy program shall:

1. Provide services utilizing therapeutic exercise and the modalities of heat, cold, water, sound, electricity and traction;

2. Conduct patient evaluations and functional assessments; and

3. Administer tests and measurements of strength, balance, endurance, range of motion and activities of daily living.

(c) A physical therapist shall be present or readily available to provide required supervision to physical therapist's assistants pursuant to KRS Chapter 327 and any regulations promulgated thereunder.

(d) Patients shall be scheduled to ensure the physical therapist's presence when specific skills of a physical therapist are needed (e.g., the evaluation or re-evaluation).

(e) Physical therapy services provided off the premises of the facility by a physical therapist's assistant shall be under the supervision of a physical therapist who makes an onsite supervisory visit with the assistant at least once every thirty (30) days.

(4) Speech pathology and audiology services.

(a) If offered, speech pathology or audiology services shall be provided directly or under arrangement with others under terms of a written contract. Speech pathology and audiology services shall be provided by a speech pathologist or audiologist. The number of speech pathologists or audiologists shall be adequate for the volume and diversity of services offered. Speech pathology aides or audiology aides shall work under the direct supervision of a speech pathologist or audiologist pursuant to the provisions of KRS Chapter 334A and any regulations promulgated thereunder.

(b) The speech pathology or audiology program shall include diagnostic and treatment services to effectively treat speech or hearing disorders.

(c) The facility shall have the equipment and facilities required to provide the range of services necessary for the

treatment of the types of speech or hearing disorders accepted for service.

(5) Occupational therapy services.

(a) If offered, occupational therapy services shall be provided by or under the direct supervision of an occupational therapist either directly or under arrangement with others under terms of a written contract. The number of registered occupational therapists and certified occupational therapy assistants shall be adequate for the volume and diversity of services offered.

(b) The occupational therapy program shall:

1. Conduct patient evaluations; and

2. Administer tests and measurements of strength, coordination, range of motion, activities of daily living, psychosocial adjustment, sensory-motor, cognitive and perceptual functioning and prevocational skills.

(c) A registered occupational therapist shall be present or readily available to provide required supervision to certified occupational therapy assistants.

(d) Occupational therapy services provided off the premises of the facility by the certified occupational therapy assistants shall be under the direct supervision of an occupational therapist who makes an onsite supervisory visit with the assistant at least once every thirty (30) days.

(e) The facility shall have the equipment and facilities required to provide the range of services necessary for the evaluation and treatment of the types of patients accepted for service.

(6) Contractual provision of physical therapy, occupational therapy, speech pathology or audiology services. When physical therapy, occupational therapy, speech therapy or audiology services are provided under contract, the contract shall:

(a) Assure that services are provided in accordance with the plan of care approved by the physician responsible for the patient's care which may not be altered in type, amount, frequency or duration by the physical therapist,

occupational therapist, speech pathologist or audiologist (except in the case of an adverse reaction to a specific treatment);

(b) Specify the geographical areas in which services are to be furnished;

(c) Provide that personnel and services contracted for meet the same requirements as those which would be applicable if the personnel and services are furnished directly;

(d) Provide that the physical therapist, occupational therapist, speech pathologist or audiologist (as appropriate) will participate in conferences required to coordinate the care of an individual patient, as needed;

(e) Provide for the preparation of treatment records with progress notes and observations, and for the prompt incorporation of such into the clinical records of the agency;

(f) Specify the period of time the contract is to be in effect and the manner of termination or renewal.

Section 5. Physical Environment. (1) Accessibility. The facility shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.

(2) Fire safety. The facility shall comply with all applicable fire safety codes.

(3) Maintenance. The licensee shall establish a written preventive maintenance program to ensure that:

1. Equipment is operative and properly calibrated; and

2. The exterior and interior of the building are clean and maintained free of any defect which is a potential hazard to patients, personnel and the public.

C. HERNANDEZ, M.D., Commissioner

FRANK W. BURKE, SR., Chairman

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: May 24, 1984

FILED WITH LRC: June 14, 1984 at 4:30 p.m.

Amended After Hearing

DEPARTMENT OF AGRICULTURE Amended After Hearing

302 KAR 16:010. Procedure for obtaining a permit for operating amusement rides or attractions.

RELATES TO: KRS 247.232

PURSUANT TO: KRS 246.040, 247.232, 247.234, 247.236, 247.990

NECESSITY AND FUNCTION: To establish the criteria for obtaining a permit to operate an amusement ride or attraction in the Commonwealth of Kentucky.

Section 1. Before operating any amusement ride or attraction in this state the owner or operator of such ride or attraction shall provide to the commissioner a written itinerary showing the location of the first set-up as well as the balance of the Kentucky itinerary as known on the date of notification. Such itinerary shall include the playing dates and location; including street and address number where the set-up is within a city or town. The itinerary shall also include the operating period at each site and shall be delivered to the commissioner at least fourteen (14) days prior to the first scheduled set-up.

Section 2. The itinerary set forth in Section 1 of this regulation shall be updated and submitted to the commissioner when cancellations or additional locations are added to the itinerary in Kentucky for the period covered by the permit.

Section 3. On or before the date of the initial inspection of the calendar year the applicant shall provide proof of liability insurance on each ride or attraction in the amount of \$1,000,000 due to all bodily injuries or deaths per occurrence. Such proof of insurance must also provide that the insurer will not cancel such policy without thirty (30) days written notice to the commissioner. Proof of insurance may be either the policy itself or a certified statement issued by the insurer attesting to the above requirements. The proof of insurance shall include a listing of the rides or attractions insured or a statement to the effect that all rides or attractions operated under the supervision of the insured are covered.

Section 4. Each owner or operator of an amusement ride or attraction shall submit to the commissioner or his designated representative an application to be provided by the commissioner. A twenty-five (25) dollar

permit fee for each ride or attraction shall accompany the application for a permit. Said permit shall not be issued until each ride or attraction has been inspected and found to be in compliance with KRS 247.232 through 247.236 and applicable regulations. To assure continued safety of amusement rides or attractions, and in addition to the initial inspection provided for pursuant to KRS 247.234 through 247.236, periodic safety inspections may be conducted at various times throughout the term of the permit according to the playing locations as listed in the itinerary.

Section 5. Upon receipt of proper application and permit fee and upon completion of satisfactory inspection as set forth in Sections 1, 2, 3, and 4 of this regulation the commissioner shall issue a permit in the name of the applicant. Accompanying such permit shall be a seal. The *Department Safety Inspector* [owner or operator] shall affix this seal to a permanent and accessible section of the ride or attraction for which such permit was issued.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: August 6, 1984
FILED WITH LRC: August 8, 1984 at 12 noon

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Prebble

(1) Type and number of entities affected: Amusement ride companies operating in the state of Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: The amusement ride companies must provide a written itinerary to the Department of Agriculture.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: The Department must keep amusement company itineraries on file.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative chosen is the most feasible.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. This regulation will apply evenly to the entire industry.

DEPARTMENT OF AGRICULTURE Amended After Hearing

302 KAR 16:020. Operation of amusement rides or attractions.

RELATES TO: KRS 247.232, 247.234

PURSUANT TO: KRS 246.040, 247.232, 247.234, 247.236, 247.990

NECESSITY AND FUNCTION: To establish guidelines for the operation and inspection of amusement rides or attractions.

Section 1. All amusement rides or attractions must bear a seal as required by regulation. If the required seal does not appear on the ride, the ride may be stopped until proof of a valid permit is furnished.

Section 2. All amusement rides or attractions must be maintained in good electrical and mechanical condition and be under the supervision of a competent operator at all times when the ride or attraction is in operation.

Section 3. All amusement rides or attractions that are potentially hazardous to bystanders must be adequately fenced so as to provide protection to spectators and riders. In the case of [or] aerial rides or swings, a barrier must be present providing a safe distance from the outmost arc of such swing or aerial ride. All power units must be shielded so as to afford public safety.

Section 4. No amusement ride or attraction or its power unit shall be so located as to present a fire hazard to adjacent buildings, exhibits or other structures. In the case of a riding device using gasoline engines, storage of gasoline in or adjacent to the riding device must be in an approved safety container and at a safe distance from any ride. All electrical wires leading to and from a riding device must be protected and insulated so as to present no shock hazard. All electrical equipment must be properly grounded. All electrical junction boxes must be locked or sealed.

Section 5. The operator of an amusement ride or attraction must ensure that no one is permitted on such ride who appears to be in an intoxicated condition, is not wearing some foot protection such as shoes or sandals, or carrying any article which may be dropped from the ride.

Section 6. Properly charged fire extinguishers shall be present at all rides or attractions in accordance with state and local standards.

Section 7. The permit issued pursuant to KRS 247.232 through 247.236 shall be posted at all times while the ride or attraction is in operation in a conspicuous place on or near the ride or attraction.

Section 8. The Kentucky Department of Agriculture guideline handbook for inspection of amusement rides and attractions plus amendments thereto are incorporated by reference.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: August 6, 1984
FILED WITH LRC: August 8, 1984 at 12 noon

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Prebble

(1) Type and number of entities affected: Amusement rides or attractions that operated in the state of Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
 - (b) Reporting and paperwork requirements: Numbered inspection seals and permits.
 - (2) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: N/A
 2. Continuing costs or savings: N/A
 3. Additional factors increasing or decreasing costs: N/A
 - (b) Reporting and paperwork requirements: Numbered inspection seals and permits.
 - (3) Assessment of anticipated effect on state and local revenues: N/A
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is the most feasible alternative considered.
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict: N/A
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
 - (6) Any additional information or comments: None

Tiering:

Was tiering applied? No. This regulation will apply evenly to the entire industry.

DEPARTMENT OF AGRICULTURE
Amended After Hearing

302 KAR 16:030. Determination of safety violations which cannot be corrected immediately.

RELATES TO: KRS 247.232, 247.234
PURSUANT TO: KRS 246.040, 247.232, 247.234, 247.236, 247.990

NECESSITY AND FUNCTION: To determine safety violations which cannot be corrected immediately.

Section 1. The amusement safety inspector shall determine the nature and severity of safety violations and shall determine when such violations cannot be corrected immediately within the meaning of KRS 247.232 through 247.236. Such determination shall be made based upon accepted industry standards, applicable law and regulations promulgated by the commissioner.

Section 2. An amusement ride or attraction operating in this state without a valid permit shall be presumed [deemed] a safety violation which cannot be corrected immediately.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: August 6, 1984
FILED WITH LRC: August 8, 1984 at 12 noon

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Prebble

(1) Type and number of entities affected: Amusement ride companies operating in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: N/A
2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
 - (b) Reporting and paperwork requirements: N/A
 - (2) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: N/A
 2. Continuing costs or savings: N/A
 3. Additional factors increasing or decreasing costs: N/A
 - (b) Reporting and paperwork requirements: N/A
 - (3) Assessment of anticipated effect on state and local revenues: N/A
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is the most feasible alternative considered.
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict: N/A
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments: None

Tiering:

Was tiering applied? No. This regulation will apply evenly throughout the industry.

DEPARTMENT OF AGRICULTURE
Amended After Hearing

302 KAR 20:150. Restriction of transportation of livestock infected with a communicable disease.

RELATES TO: KRS 257.020
PURSUANT TO: KRS 257.030

NECESSITY AND FUNCTION: To prevent and control the spread of communicable disease in livestock by restricting movement of animals.

Section 1. The movement or transportation of livestock known to be infected with or exposed to a communicable disease or exhibiting clinical symptoms of a communicable disease may be restricted or limited until such time as the chief livestock sanitary official shall authorize such livestock's movement or transportation.

Section 2. No livestock restricted or limited under Section 1 of this regulation shall be moved or transported interstate until prior authorization for such movement or transportation is obtained from the chief livestock sanitary official.

Section 3. The owner of any animal which has been restricted or limited by the chief livestock sanitary official pursuant to Section 1 of this regulation may within ten (10) days after receiving notice of such restriction apply in writing to the chief livestock sanitary official for a retest or redetermination. A licensed accredited veterinarian to be selected by the chief livestock sanitary official and the owner of the animal so restricted shall conduct the retest or redetermination within ten (10) days after receipt of the application. If no evidence of clinical symptoms or of infection or exposure is found after the retest or redetermination then the animal's movement shall no longer be restricted or limited.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: August 6, 1984
FILED WITH LRC: August 8, 1984 at noon.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: J. D. Wolf

(1) Type and number of entities affected: Livestock industry in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: Accurate records of infected animals on Kentucky premises.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Accurate records of infected animals.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. All facets of livestock industry treated alike.

DEPARTMENT OF AGRICULTURE

Amended After Hearing

302 KAR 20:160. Control of viral equine arteritis.

RELATES TO: KRS 257.020

PURSUANT TO: KRS 257.030

NECESSITY AND FUNCTION: To establish guidelines for the prevention and control of viral equine arteritis and for the movement of horses from the Commonwealth of Kentucky.

Section 1. No breeding stallion on premises where horses infected with viral equine arteritis are present shall be moved or transported from such premises until authorized by the chief livestock sanitary official.

Section 2. No mare bred on premises where stallions infected with viral equine arteritis are present shall be moved or transported interstate until authorized by the chief livestock sanitary official.

Section 3. No horse exposed to an infected horse or vaccinated against viral equine arteritis shall be moved or transported interstate after such exposure or vaccination until authorized by the chief livestock sanitary official.

Section 4. No horse shall be moved interstate unless the temperature of that horse is within the normal limits

for the age and condition of said horse. The temperature of all horses authorized to be moved interstate shall be recorded on said animal's health certificate.

Section 5. A retest or redetermination of a decision by the chief livestock sanitary official shall be secured in the same manner as required under 302 KAR 20:150(3).

DAVID E. BOSWELL, Commissioner

APPROVED BY AGENCY: August 6, 1984

FILED WITH LRC: August 8, 1984 at Noon

REGULATORY IMPACT ANALYSIS

Agency Contact Person: J. D. Wolf

(1) Type and number of entities affected: Kentucky equine industry.

(a) Direct and indirect costs or savings to those affected:

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs (note any effects upon competition): NA

(b) Reporting and paperwork requirements: Accurate records of infected animals on Kentucky premises.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: Accurate records of infected animals on Kentucky premises.

(3) Assessment of anticipated effect on state and local revenues: NA

(4) Assessment of alternative methods; reasons why alternatives were rejected: NA

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. All facets of equine industry treated alike.

DEPARTMENT OF AGRICULTURE

Amended After Hearing

302 KAR 34:010. Definitions.

RELATES TO: KRS 251.610, 251.640

PURSUANT TO: KRS 251.700

NECESSITY AND FUNCTION: To further clarify the Kentucky Grain Insurance Fund Act and Dealer Law.

Section 1. Participant or participation in the Kentucky grain insurance fund shall mean:

(1) Any person who has in good faith contributed to the Kentucky grain insurance fund prior to meeting the

criteria of the claimant shall be a participant in the Kentucky grain insurance fund.

(2) Persons who have marketed grain on a deferred or delayed pricing contract shall be participants in the Kentucky grain insurance fund.

(3) Any person storing grain with a dealer or warehouseman who has not previously contributed to the fund may participate therein and obtain all the protection of the fund by remitting one-half (½) cent per bushel on all grain stored at the time such grain is placed in the custody or control of the dealer or warehouseman.

[Section 2. Processing shall mean the method by which grain is prepared for further marketing of the grain.]

DAVID E. BOSWELL, Commissioner

APPROVED BY AGENCY: August 6, 1984

FILED WITH LRC: August 8, 1984 at Noon

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tom Troth, Tom Dowler

(1) Type and number of entities affected: None

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None rejected

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None apparent

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Regulation 302 KAR 34:010 is promulgated to clarify two terms (Participant and Processing) as the terms are used in House Bill 758. Any savings to affected entities would occur indirectly and only in the event they were involved as a claimant in a grain dealer or warehouse insolvency.

Tiering:

Was tiering applied? No. Tiering is not applicable to this regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management Amended After Hearing

401 KAR 49:030. Designation as a solid waste management area.

RELATES TO: KRS 109.011 to 109.280, 224.835, 224.842, 224.887, 224.888

PURSUANT TO: KRS [13.082,] 224.033, 224.887

NECESSITY AND FUNCTION: KRS 224.887 requires the cabinet to promulgate regulations for counties and waste management districts in creating solid waste management areas. This chapter established the requirements for solid waste planning. This regulation identifies the criteria for receiving designation as a solid waste management area. This regulation neither prohibits nor discourages the participation of the private sector in any solid waste activity. Moreover, it is preferable for solid waste activities to be performed by the private sector when such is in the best interests of the public and conforms with the policies and provisions set forth in KRS Chapter 109.

Section 1. Application for Designation as a Solid Waste Management Area. All counties shall apply to the cabinet for designation as a solid waste management area. The application may be made by a single county, two (2) or more counties or a waste management district and shall be on a form provided by the cabinet. The application shall include:

(1) Name of the proposed area;

(2) Name and address of the primary agency responsible for area plan development;

(3) Name, address and telephone number of the individual identified as the contact person for the primary agency;

(4) Copies of actions of each fiscal court approving the waste management plan and a resolution to apply as a [establishing the proposed] solid waste management area [, modifying local legal authority or significantly affecting solid waste management planning];

(5) The agreement or contract establishing the proposed area, if applicable;

(6) The proposed rules, regulations or by-laws governing the proposed area;

(7) A list of the members of the fiscal court or board of directors, or, in the case of an urban-county government, the body in which [chief] legislative power is vested, and their titles, if appropriate;

(8) A map of the proposed area drawn to scale, of at least 1:125,000;

(9) A copy of the public notice required under Section 4(1) of this regulation for area plan adoption;

(10) A description of the general administrative process to implement the plan which shall include when applicable budgeting, enforcement, plan review, public information, management and operation of the waste management activities or facilities proposed and shall identify agencies or persons charged with overseeing plan implementation; [and]

(11) The area plan prepared in accordance with 401 KAR 49:020, Submission of area plan; and [.]

(12) A resolution approving the plan from those city legislative bodies in the proposed area that have participated in and provided financial assistance in plan development.

Section 2. Designation as a Solid Waste Management Area. (1) Approval of the application. The cabinet shall review the information submitted pursuant to Section 1 of this regulation to determine whether the application and area plan are consistent with the Kentucky Waste Management Plan and in compliance with all applicable state laws and regulations. If the information is in compliance, the cabinet will approve the application in writing within thirty (30) days.

(2) Rejection of the application. Rejection of the application shall be in writing and accompanied by a list of deficiencies which, if corrected, would justify approval of a revised area plan. If the deficiencies in the area plan are substantial or significant, the cabinet may, in addition to a list of deficiencies, present a suggested course of action to the fiscal court, board of directors or, in the case of an urban-county government, the body in which [chief] legislative power is vested, or the assigned office or agency, which could expedite the submission of an acceptable area plan.

Section 3. Duration of Designation. Unless otherwise specified as a condition for designation as a solid waste management area, designation as a solid waste management area will be for a term not to exceed *five (5) [twenty (20)]* years. Redesignation as a solid waste management area shall be based upon the review conducted in accordance with Section 5 of 401 KAR 49:020 and Section 2 of this regulation, or upon a revision to the area plan in accordance with Section 4 of this regulation. If the county, counties or waste management district of a designated area amends, modifies, or dissolves the agreement establishing the area, the cabinet shall be notified in writing no later than thirty (30) days after such action. Each county or counties from a dissolved solid waste management area shall submit a revised proposed area plan, approved by the fiscal court of the county or counties within the proposed area or, in the case of an urban-county government, the body in which [chief] legislative power is vested, within six (6) months of the date of dissolution of the area. The cabinet will review the notification of amendment or modification of an agreement and make a written determination as to whether the county or counties shall submit a revised area plan. Failure to comply with the provisions of this section regarding revision of the area plan shall be grounds for revocation of area designation.

Section 4. Area Plan Adoption and Revision. Prior to applying for designation as a solid waste management area, the fiscal court of each county in the proposed area or, in the case of an urban-county government, the body in which [chief] legislative power is vested, shall *issue a public notice indicating their intent to apply for designation as a solid waste management area and that a solid waste management plan is available for public review* [hold a public hearing or meeting to approve the application for designation as a solid waste management area and the proposed area plan].

(1) Public hearings [or meetings]. *If a public hearing is requested as a result of this public notice*, the fiscal court of each county in the proposed area shall hold at least one (1) public hearing [or meeting] prior to adopting or approving the application for designation as a solid waste management area[, area plan or a substantial revision to the area plan]. The cabinet recommends that each comment received be evaluated and that a written response be prepared. A transcript or a summary of the comments received and the consideration of comments, if prepared,

shall be made available to the members of the fiscal court of each county in the proposed area and the board of directors, if applicable, prior to adoption or approval of the application for designation as a solid waste management area or area plan. Copies of the comments and any consideration of comments shall be made available to the public through public libraries, public offices, individual copies, or any similar means, and shall be available to the cabinet upon request. [In addition,]

(2) Each fiscal court in the proposed area *prior to adopting the area solid waste management plan* shall:

(a) Notify each city which is located within the county of the availability of the proposed area plan; and

(b) Allow adequate time to receive and review comments from the cities.

(3) [(2)] Approval by the county. The fiscal court of each county in the proposed area or, in the case of an urban-county government, the body in which [chief] legislative power is vested, shall approve the application for designation as a solid waste management area and the area plan. Approval shall not take place prior to a public hearing or meeting on the application for designation as a solid waste management area, the proposed area plan or substantial revision as required by subsection (1) of this section. Approval of an application for designation as a solid waste management area, proposed area plan or revision shall be by resolution and shall state concurrence with the following:

(a) The objectives set forth in the area plan;

(b) The schedule for implementation of the program;

(c) Procedures to obtain financing for the recommended public program through the short-term planning period; and

(d) The duties and responsibilities of the county identified in the area plan.

(4) [(3)] Updates and revisions to the area plan. Updates and revisions shall be made:

(a) If the cabinet determines that the approved area plan or any part thereof is inadequate based on new or revised information, conditions or circumstances. The cabinet will notify the solid waste management area in writing that an amendment or revision to the area plan is required.

(b) If a solid waste management area determines that the approved plan or any part thereof is inadequate based on new or revised information, conditions or circumstances. The area may amend, modify or revise the approved plan and the revised plan shall be approved by the fiscal court of each county within the area or, in the case of an urban-county government, the body in which [chief] legislative power is vested, and submitted to the cabinet for review and approval.

(c) All area plans shall be updated and readopted in accordance with the provisions of this section at least every four (4) years. The updated plan shall use current data and shall assure compliance with the Kentucky Waste Management Plan and all applicable laws and regulations.

Section 5. City Government and Private Sector Roles in Solid Waste Management. (1) No city shall be authorized to prepare an area plan or apply for designation as a solid waste management area unless the *county* [fiscal court(s)] or [board of directors of the] waste management district delegates responsibility for area plan development to the city. Area plans prepared by a city *shall* [must] address solid waste management problems and activities at both the city and county levels.

(2) If a county fails to submit an area plan by *June 30, 1986* [January 1, 1984], a city may provide solid waste ser-

vices and shall have all the powers and restrictions set forth for counties in KRS 109.041, 109.056, 109.059, and 109.062.

(3) As provided in KRS 109.011(8), it is preferable for solid waste activities to be performed by the private sector when such is in the best interests of the public and conforms with the policies and provisions set forth in KRS Chapter 109. An area as authorized by KRS 109.041(7) may provide for the delivery of solid waste activities through use of a public agency, or a franchise, contract, or lease. In areas where it can be demonstrated that the private sector can adequately deliver [desired] solid waste management services without public agency involvement, the area plan shall address itself to what steps the proposed area could take, if any, to assure that such services will be provided.

[(4) A solid waste management area may require the use of any solid waste management facility meeting the approval of the cabinet, by all persons situated within its geographic boundary. An exception to this rule are those cities which own and operate solid waste facilities, other than sanitary landfills, which were in existence prior to July 17, 1978. Area plans that include use of city financed solid waste management facilities, shall include provisions for insuring sufficient revenues to the city to retire any debt on said system. Area plans that include provisions for solid waste management services to a city, shall provide the city with written notice at least one (1) year prior to the date it intends to provide such service to the city.]

[Section 6. Implementation Reports. The solid waste management area shall submit annual reports to the cabinet, in accordance with a schedule established by the cabinet upon plan approval, describing the progress made on area plan implementation. The implementation report shall be on a form provided by the cabinet and contain:]

[(1) An identification of solid waste management activities and facilities currently in use;]

[(2) An estimate of the population served by each existing activity or facility;]

[(3) An assessment of conformance with the detailed schedule contained in the approved plan and required by 401 KAR 49:020, Section 4(6).]

Section 6. [7.] Area Submission. (1) Submission date. The application for designation as a solid waste management area and area plan shall be submitted to the cabinet by *December 30, 1985* [July 1, 1983]. *One (1) [A] six (6) month extension may [shall] be granted by the cabinet, if the county, city [counties], or waste management district has demonstrated, in the cabinet's judgment, a good faith effort to develop an area plan. Should a county, counties or waste management district find a six (6) month extension necessary, the fiscal court(s), board of directors, or, in the case of an urban-county government, the body in which [chief] legislative authority is vested, or other duly delegated office or agency shall submit a request in writing to the cabinet which details the extent of plan development accomplished and cites the need for an extension of the deadline date.*

(2) Copies required. The county, counties or waste management district shall submit one (1) copy of the application for designation as a solid waste management area and at least three (3) copies of the area plan. Copies must be eight and one-half (8½) inches by eleven (11) inches and each page shall be securely bound in a notebook, folder or a similar means designed to keep pages in order. Pages shall be numbered and a table of contents provided. A title

sheet or transmittal letter identifying the plan and the agency or office which developed the plan shall be placed at the beginning of the area plan package.

Section 7. [8.] Enforcement. (1) *Failure to prepare an area solid waste management plan by December 30, 1985, or if an extension is granted by June 30, 1986, will [is] subject a county to the penalty provisions contained within KRS 224.994.*

(2) Citizen petition. If a fiscal court or, in the case of an urban-county government, the body in which [chief] legislative authority is vested, fails to establish a solid waste management plan by *December 30, 1985* [January 1, 1984], the citizens of the county may petition the county judge/executive or, in the case of an urban-county government, the official in whom chief executive power is vested, to request preparation of an area plan. The petition shall be signed by a number of citizens equal to ten (10) percent of the votes cast in the county for the office receiving the greatest total votes in the last general election. The petition shall be filed with the county judge/executive or, in the case of an urban-county government, the official in whom chief executive power is vested, asking that the proposition whether to develop a plan be placed on the ballot of the next general election. [The cabinet will develop and maintain a list of counties which have received designation as solid waste management areas and the status of those counties which have not received area designation. This list will be made available to the public. Upon determination by the cabinet that no substantial progress is being made by a county in area plan preparation by January 1, 1984, the cabinet may hold a public meeting in those counties to discuss the need for an alternative approach to plan preparation.]

(3) [(2)] Implementation deficiencies. If the cabinet determines that an area solid waste management plan is not being implemented as approved, it will notify the solid waste management area in writing of implementation deficiencies. The solid waste management area shall within forty-five (45) days respond in writing demonstrating the action taken or planned to correct the implementation deficiencies, or request a revision to the approved plan in accordance with Section 4 of this regulation. If amendments or revisions to the plan are not made, the cabinet may conduct a public hearing or meeting to determine whether the approved plan should be revised or revoked. If the cabinet determines that a plan is not capable of being implemented, area designation shall be revoked and the cabinet shall require the county or counties to submit a new proposed area plan. Designation of a county, counties, urban-county government or waste management district, as a solid waste management area shall also be revoked until such time as a new plan is approved.

(4) [(3)] Permit application and compliance with area plan. Where facilities are proposed in areas with approved plans, the cabinet will review the area plan to insure that the proposed facility complies and is consistent with the area plan before a permit is issued. In reviewing the application for a new facility, the cabinet will consult with the solid waste management area to determine if the proposed facility is consistent with the approved area solid waste management plan. If the proposed facility is not consistent or in compliance with the approved area plan, the cabinet may deny the permit for the new facility unless a revision to the plan is requested by the solid waste management area. If the proposed facility is consistent and in compliance with the area plan and other applicable laws and

regulations, cabinet review will follow [be accomplished in accordance with the provisions of] KRS 224.855.

Section 8. [9.] Severability. If any section, paragraph, phrase, sentence or clause of this chapter is declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: August 9, 1984

FILED WITH AGENCY: August 10, 1984 at Noon

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Oil and Gas
Amended After Hearing

805 KAR 1:110. Underground injection control.

RELATES TO: KRS 353.520

PURSUANT TO: KRS [13.082,] 353.540, 353.550, 353.560

NECESSITY AND FUNCTION: KRS 353.540 authorizes the Department of Mines and Minerals to administer and enforce the provisions of KRS 353.500 to 353.720. The waste of oil and gas is prohibited by KRS 353.520, which provides that such prohibited waste includes the unreasonable damage to underground, fresh or mineral water supply, workable coal seams, or other mineral deposits in the operations for the discovery, development, production, or handling of oil and gas, the unnecessary or excessive surface loss or destruction of oil or gas or their constituents and the drowning with water of any stratum or part thereof capable of providing oil or gas in paying quantities, except for secondary recovery purposes, or in hydraulic fracturing or other completion practices. It is the purpose of this regulation to protect fresh water zones from contamination associated with the production of oil and gas.

Section 1. Definitions. The definitions contained in KRS 353.510 and the following additional definitions shall apply to this regulation. (1) "Underground source of drinking water (U.S.D.W.);" means an aquifer or its portion:

- (a) 1. Which supplies any public water system; or
2. Which contains a sufficient quantity of groundwater to supply a public system; and
- a. Currently supplies drinking water for human consumption; or
- b. Contains fewer than 10,000 mg/l total dissolved solids; and

(b) Which is not an exempted aquifer.

(2) "Aquifer" means *geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring* [any groundwater zone which will replenish itself and from which significant quantities of water for household, domestic, industrial, agricultural or public use may be economically or feasibly recovered].

(3) "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals.

(4) "Class II well" means a well which injects fluids:

(a) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are

an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection; or

(b) For enhanced recovery of oil or natural gas; or

(c) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(5) "New Class II well" means a Class II well on which drilling or conversion commenced later than thirty (30) days after the date of primacy.

(6) "Existing Class II well" means all Class II wells other than new Class II wells.

(7) "Date of primacy" means the effective date of the Administrator of the Environmental Protection Agency's [Secretary of Interior's] approval of Kentucky's Underground Injection Control (UIC) Program, made pursuant to section 1425 of the Safe Drinking Water Act.

(8) "Area of review" means that area within *not less than* a fixed radius of one-fourth ($\frac{1}{4}$) mile around an injection well; *provided, however, that* [. At] at the option of the permit applicant, the area of review may be deemed to be the zone of endangering influence calculated in accordance with 40 CFR 146.06, which is adopted and incorporated herein by reference.

(9) "Endanger" means that an injection operation may result in the presence in underground water, which supplies or can reasonably be expected to supply any public water system, of any contaminant and that the presence of that contaminant may result in such system not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

(10) "Freshwater" is defined as a U.S.D.W.

(11) "Project" means a group of wells in a single operation.

Section 2. General. (1) No person shall drill a Class II well without first obtaining a permit to drill pursuant to KRS 353.570(1) and (2).

(2) No person shall inject fluids to the subsurface through a Class II well without the authorization of the director. Such authorization shall take the form of a permit issued pursuant to Section 8 of this regulation or of a permit by rule conferred in accordance with Section 4 of this regulation.

(3) *The owner or operator of a Class II well is required to maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the director.* [The bond requirements established in KRS 353.590 for a permit to drill shall suffice for and be applicable to the permit to inject.]

(4) The fee requirements for an application to drill a new Class II injection well pursuant to KRS 353.590 shall suffice for and be applicable to the permit to inject.

(5) The permit to operate any Class II well may be transferred to a successor only after notice is given to the director. Such notice shall include at least the following:

(a) The original operator's company name and address.

(b) The successor's company name and address.

(c) The permit number of the well.

(d) The Carter Coordinate location.

(e) The farm name and well number.

(f) Signatures of the original operator and the successor, or that of their official representative(s).

(g) A statement that the successor assumes all responsibility for the well.

(6) All Class II wells shall be plugged in the manner established in 805 KAR 1:060 and 805 KAR 1:070.

(7) An applicant for an injection permit shall be required to satisfy the director that the Class II well will not endanger a U.S.D.W.

(8) No permit by rule shall be interpreted as authorizing injection through a Class II well which endangers a U.S.D.W.

(9) *If the director concludes that casing and cementing of a Class II well authorized by rule is inadequate and that movement of fluids endangers U.S.D.W. the director shall require an individual permit or notify the owner or operator of such well of necessary corrective action. Any such corrective action must be completed within one (1) year of notification of the owner or operator.*

(10) [(9)] In administering and applying this regulation, the director shall, to the maximum practicable extent, take into account the varying geologic, hydrological and historical conditions in different areas within the state. The director may, where consistent with other provisions of this section, upon application and after notice and hearing, grant a variance from any requirement of this regulation upon a showing that alternate prudent engineering practices will protect a U.S.D.W.

Section 3. Exempted Aquifers. An aquifer or a portion thereof which meets the criteria established in this section for a U.S.D.W. may be determined by the director to be an "exempted aquifer" if it meets the following criteria:

(1) It does not currently serve as a source of drinking water; and

(2) It cannot now and will not in the future serve as a source of drinking water because:

(a) It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated to contain minerals or hydrocarbons that, considering their quantity and location, are expected to be commercially producible;

(b) It is situated at a depth or location which makes recovery of water for drinking water purposes economical or technologically impractical [impracticable];

(c) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or

(d) It is located over a Class III mining area subject to subsidence or catastrophic collapse; or

(3) The total dissolved solids content of the groundwater is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

Section 4. Permit by Rule. (1) All existing Class II wells are granted a permit by rule and authorized to inject fluids to the subsurface provided that the owner or operator:

(a) Maintains compliance with all applicable requirements of Section 5 and 7 of this regulation; and

(b) Within one (1) year from the effective date of this regulation, files an area plat or plats showing all of the Class II wells subject to the permit by rule. The plat(s) submitted must show the existing Class II wells and all lessors' and lessees' names and boundaries, and shall be prepared and certified as accurate and correct by a licensed Kentucky Land Surveyor.

(2) All new Class II wells, constructed as part of an existing injection project [field], may be operated by rule after the following information has been submitted to and approved by the director:

(a) The application to operate by rule shall be submitted on forms provided by the director and shall be identical to application forms used for new Class II wells (Section 8 of this regulation).

(b) All the requirements of Section 8 of this regulation shall apply except subsection (1)7 and 8 and subsection (3).

(c) The plat submitted with said application to inject into a new Class II well in an existing project [field] shall

satisfy the applicable requirements of Section 8 of this regulation and shall also show the proposed well location in the existing project [field], and that its location falls within an area having wells conforming to a geometric pattern already established.

(3) Injection of fluids to the subsurface shall not be made until a permit to inject is issued.

Section 5. Requirements Applicable to All Class II Well Permits. Authorization to inject fluids through all Class II wells (whether by rule or by individual permit) shall be conditioned upon compliance with the following requirements:

(1) The permittee shall promptly notify the director of any modification in the manner in which the injection operation is conducted or of any mechanical failure or downhole problem encountered in the operation of the Class II wells or upon recognition of a failure in an injection system. Said well or wells which appear to be leaking shall be shut down immediately and correction procedures shall be initiated within fifteen (15) days, or the permit to inject may be revoked.

(2) The permittee shall afford the director, or his authorized representative(s) upon proper presentation of credentials, access to Class II wells and related facilities for the purpose of conducting inspections, witnessing mechanical integrity tests, corrective action operations and plugging procedures and testing samples of injected fluids.

(3) The permittee shall regulate the injection pressure in such a manner that the pressure in the injection zone does not initiate new fractures or propagate existing fractures in the confining zone which would cause the movement of injected fluids into a U.S.D.W. *The director may, when necessary to insure compliance with this requirement, establish limitations on the wellhead pressure at which Class II wells may be operated. Any such limitation shall be included as a permit condition or through an order issued after notice and opportunity for hearing.*

(4) The permittee shall provide for the mechanical integrity of the well by operating without significant leaks in the casing, tubing, or packer and without significant fluid movement into a U.S.D.W. through vertical channels adjacent to the well bore. The permittee shall, upon request of the director, conduct tests of the mechanical integrity of the Class II wells, utilizing a method approved by the director. Otherwise, tests shall, as nearly as practicable, be scheduled at five (5) year intervals and the permittee shall certify the test results to the director in writing within fifteen (15) days subsequent to the test. *Each Class II well shall be tested for mechanical integrity at least every five (5) years.*

(5) The permittee shall monitor and record injection pressures rates and volumes at least monthly and shall submit on forms provided by the director, an annual report of the results of such monitoring to the director. The permittee shall retain all such records on file for a period of five (5) years. *The owner or operator of hydrocarbon storage or enhanced recovery wells may monitor them by manifold monitoring on a field or project basis rather than on an individual well basis if such facilities consist of more than one (1) injection well, operate with a common manifold, and provided the owner or operator demonstrates to the director that manifold monitoring is comparable to individual well monitoring.*

(6) *For purposes of this section, a permittee shall include the owner or operator of a well authorized by rule under Section 4 of this regulation.*

Section 6. Construction Requirements for All New Class II Wells. (1) All new Class II injection wells shall be constructed *in accordance with applicable provisions of KRS 353.570(1) and (2) and 805 KAR 1:020* in a manner that will prevent injected fluids from escaping to a U.S.D.W. A freshwater string of casing must extend fifty (50) feet below the freshwater depth stated on the permit or the base of the deepest fresh water, whichever is greater. All freshwater casing strings shall have cement circulated to fill the annular space outside said casing. Such casing shall be cemented, using approved engineering methods to assure the return of the cement to the surface. The long string of casing must extend at least from the surface to immediately above the injection interval, and must have a minimum of 300 feet of cement behind the lowermost 300 feet of casing. If the fresh water is not protected by a separate string of casing, then the long string must be cemented from top to bottom.

(2) Any active oil and gas well, or an abandoned or plugged well reopened for the purpose of conversion to a new Class II injection well, shall satisfy the requirements for cementing of new Class II wells. If perforation of existing casing is required to satisfy the current cementing regulations during the conversion of said well(s) to a new Class II well, a tubing and packer shall be installed in the existing casing to the area immediately above the injection interval, not to exceed 100 feet above said injection interval.

(3) *All new Class II disposal wells shall be designed to insure that disposal zones are hydraulically isolated from U.S.D.W.*

Section 7. Mechanical Integrity Requirements for all Class II Injection Wells. All operators shall demonstrate mechanical integrity of new and existing Class II injection wells. The following methods are considered sufficient to establish mechanical integrity:

(1) All permittees of new or converted Class II injection wells shall perform mechanical integrity test(s) of the installation(s) prior to injection to ensure there are not leaks in the system(s). The test pressure must exceed the maximum anticipated injection pressure by at least 100 psi. Pressure and rate sensitive devices must be used to ensure there are no significant changes in pressure or volume of fluids injected. The test results shall be filed on forms approved by the director.

(2) The permittee of all Class II wells, both new and existing, shall schedule as nearly as practicable at five (5) year intervals mechanical integrity test(s). The following methods may be used:

(a) Subsection (1) of this section shall suffice; or

(b) For existing Class II wells, and new wells at least five (5) years old, the applicant may, *subject to approval of the director*, in lieu of the test described in subsection (1) of this section file historical injection records *only on an individual well basis*. Said records must show weekly volume and pressure rates in tabular or graphic form that reflect rate of volume or pressure variation within the injection system for a period of five (5) years or the life of the well, whichever is shorter, and must be certified by the operator as correct and accurate.

Section 8. Requirements for a Permit to Inject into New Class II Wells. (1) No person shall inject fluids to the subsurface through a new Class II well without obtaining a permit to inject. This permit shall be issued under the authorization of the director. Existing wells satisfying the requirements of Section 4 of this regulation shall be per-

mitted by rule. To obtain a permit to inject, an applicant shall submit to and have approved by the director an application. The application shall be submitted on forms provided by the director and shall include such information as the director deems necessary for the issuance of the permit, including all of the following:

(a) A statement by the operator as to whether the well is to be used for enhanced recovery, or for disposal purposes.

(b) The approximate depths of the deepest known freshwater zones.

(c) A location plat for a permit to inject into a Class II injection well shall be prepared and certified as accurate and correct by a registered Kentucky Land Surveyor. Said plat shall include the following information:

1. All plats shall be submitted on a sheet 8½ x 14 inches. This sheet may be on paper, tracing cloth, training paper or equivalent.

2. The names of all lessees and lessors contiguous to the tract on which the injection shall occur.

3. The Carter Coordinate Location and the elevation of the well site.

4. The geologic name and depth of the injection zone.

5. At least two (2) surface features, by bearing and distance from the proposed well site, which appear on the U.S.G.S. 7½ minute topographic map of the area.

6. The name of said topographic map and county.

7. The location of all known freshwater wells within the area of review.

8. The location and completion and/or plugging record of all wells, whether producing or plugged, within the area of review.

(d) Information showing that injection will not initiate fractures through the overlying strata shall include, but not be limited to the following:

1. A fluid injection rate of 1,000 barrels or less for a period of twenty-four (24) hours, or an equivalent rate for any fraction of twenty-four (24) hours, must maintain a minimum separation thickness of 200 feet between the lowest base of known fresh water, and the top of the proposed injection interval per well.

2. A fluid injection rate of more than 1,000 barrels for a period of twenty-four (24) hours, or an equivalent rate for any fraction of twenty-four (24) hours, must maintain a minimum separation thickness of 500 feet between the lowest base of known fresh water, and the top of the proposed injection interval per well.

3. The director may allow lesser thickness than required in subparagraphs 1 and 2 of this paragraph if the applicant furnishes certified evidence to the director that lesser thickness will not initiate fractures into the U.S.D.W.

(e) The Well Log and Completion Report and a copy of all geophysical logs.

(f) A certificate that shall include the following:

1. The identification of the well by permit number, operator's name, lease name, well number, Carter Coordinate Location, elevation and county.

2. The entire casing and cementing record, any packers and other special downhole equipment, and cement bond logs, if run.

3. The anticipated maximum bottom hole pressure (psi) and volume in barrels or cubic feet per day.

4. The identification of the injection zone by geological name and depth (top and bottom of zone), the number of perforations, if applicable, or the interval of open hole.

5. The certification by the operator of mechanical integrity. Each well shall be tested for mechanical integrity using method(s) approved by the director prior to being placed in service and the test results shall be certified to the

director in writing. The director may require less information from the applicant where the information is readily available, or from up-to-date in-state files, or where, based upon demonstrable knowledge available to the director about the proposed operation, the director proposes to permit the operation without requiring corrective action or alternatives to it.

(2) Applications for permit shall be signed by the owner or operator of the injection well, including corporate officers, general partners, sole proprietors, or other persons authorized to execute such documents on behalf of the applicant.

(3) An applicant for permit under this section shall provide public notice of the permit application by causing a notice of the application to be posted in the county courthouse of the county in which the Class II well is proposed to be located. Such notice shall describe the proposed action, and advise interested parties that additional information may be obtained from the director, that a public hearing may be requested, and that comments on the proposed action and requests for public hearing must be submitted to the director within fifteen (15) days of posting of the notice. The applicant shall provide a copy of the public notice to the director accompanied by an affidavit as to the manner in which public notice of the application was provided. If a significant degree of public interest is indicated, the director shall conduct a public hearing on the application. At the conclusion of the public comment period (including any public hearing) the director shall take final action on the permit application.

(4) The permit to inject shall be issued before injection is allowed.

(5) The permittee shall notify verbally field inspectors five (5) days before all mechanical integrity tests are performed. A written notice shall be given to the director five (5) days before said tests are performed.

(6) The permit to inject into all Class II injection wells shall remain valid for the life of the well or project. However, the permit may be terminated if the well or project is in violation of the law. The well operator must comply with the requirements of all applicable regulations.

(7) The permittee of all Class II injection wells shall notify the director in writing within thirty (30) days of the termination of operations at which time the permit to inject shall expire.

Section 9. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy. On and after said date, Class II wells shall be subject to the requirements of this regulation and shall be exempt from regulation under Sections 4, 5 and 6 of 805 [801] KAR 1:020.

WILLARD STANLEY, Commissioner
MELVIN WILSON, Secretary

APPROVED BY AGENCY: July 27, 1984

FILED WITH LRC: July 27, 1984 at 2:30 p.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Amended After Hearing

902 KAR 10:080. Construction standards for components of onsite sewage disposal systems.

RELATES TO: KRS 211.350 to 211.380, 211.990(2)
PURSUANT TO: KRS 13.082, 194.050, 211.090(3), 211.180(3)

NECESSITY AND FUNCTION: KRS 211.350 to 211.380 directs the cabinet to regulate the construction, installation, or alteration of onsite sewage disposal systems except for systems with a surface discharge. The purpose of this regulation is to establish minimum component standards including design, construction, and materials specifications for onsite disposal systems in Kentucky in order to protect the public health.

Section 1. Citation of Regulation. This regulation may be cited as the "Construction Standards for Components of Onsite Sewage Disposal Systems."

Section 2. Definitions. As used in this regulation the following terms shall have the meanings set forth below:

(1) "Aerobic treatment unit" means any sewage treatment unit which utilizes the principle of oxidation in the decomposition of sewage by the introduction of air into the sewage.

(2) "Approved" means that which has been considered acceptable to the cabinet.

(3) "Cabinet" means the Cabinet for Human Resources and its agents.

(4) "Effluent" means the liquid discharge of a septic tank or other sewage treatment unit.

(5) "Lateral field" means the area in which lateral lines are installed or can be used to generally describe the soil absorption portion of the subsurface sewage treatment and disposal system.

(6) "Lateral lines" means approved pipe or other approved materials or devices which receive partially treated effluent from a distribution device and distribute the effluent for further treatment and absorption into the soil beneath the ground surface.

(7) "Low pressure pipe system" means an onsite sewage disposal system consisting of a septic tank(s) or aerobic treatment unit, a dosing tank with pump(s) or siphon(s), a pressurized supply line, manifold, and lateral lines, and necessary control devices and appurtenances.

(8) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.

(9) "Onsite sewage treatment and disposal system" means a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground.

(10) "Secretary" means the Secretary for the Cabinet for Human Resources.

(11) "Septic tank" means a watertight sewage treatment unit designed and constructed to receive raw sewage, separate solids from liquid, anaerobically digest organic matter, store liquids through a period of detention, and allow the clarified effluent to discharge.

(12) "Septic tank system" means a subsurface sewage treatment and disposal system consisting of a septic tank(s), a gravity-fed lateral field, necessary pipe lines, conduits, pump stations, and other appurtenances required for proper collection, distribution, treatment, disposal, operation, and performance.

Section 3. Approval Procedures. (1) All commercial manufacturers and suppliers of materials, components, and equipment designed or intended for use in the construction of onsite sewage disposal systems shall obtain approval of such materials, components, and equipment from the cabinet prior to their sale or use in Kentucky. Such approval shall be based upon conformance to

recognized design, materials, construction, and performance standards of the National Sanitation Foundation (NSF), the American Society for Testing and Materials (ASTM), and the standards set forth in this regulation.

(2) Manufacturers, purveyors and suppliers of such materials, components and equipment shall submit the following information, as applicable, to the cabinet for review and consideration in the approval process:

(a) All applicable plans, specifications, process descriptions, and other relevant data.

(b) Supportive test data from independent laboratories, testing firms, NSF, ASTM, and other approved organizations.

(c) Other pertinent information as requested by the cabinet.

(3) New or experimental materials, components, or equipment shall be submitted for approval as outlined in subsection (2) of this section and the following additional requirements and restrictions shall apply:

(a) Those materials, components, or equipment which consist of modifications to existing approved products shall be considered for approval after demonstration, through independent testing of the modifications, that improved performance, service life, or ease of maintenance and operation results.

(b) Those materials, components, or equipment which involve new or experimental technologies relating to design, construction, or operational process shall be considered for approval on a probationary basis. During the probationary period, it shall be the responsibility of the person seeking approval of such product to contract with an independent testing firm to provide monitoring of the performance of the product in its intended usage. Such monitoring of the product shall include documentation of the site conditions where the product is installed, the waste load generated by the user and its constitution, and other parameters deemed necessary by the cabinet. In the event that the product fails to perform in an acceptable manner, it shall be the responsibility of the person seeking its approval to replace the product with another product which is approved by the cabinet for that particular use.

(c) Any materials, components, or equipment which, in the opinion of the cabinet, meet the requirements for approval after careful study and testing, as required, shall be considered to be approved for use in Kentucky for the specific purpose(s) intended. Such approval shall be made in writing to the person requesting same and shall set forth any conditions or restrictions for the use of the product when deemed necessary by the cabinet. Each product, so approved, shall be listed by the cabinet on an "approved listing of materials, components, and equipment," which shall be updated on a timely basis and distributed to local health departments and other interested parties on request.

Section 4. Septic Tank Standards. (1) Precast concrete.

(a) All precast concrete septic tanks shall be designed and constructed so as to provide sufficient rigidity and structural strength to prevent damage due to hydrostatic water pressure and support vertical uniform loading of 150 lb./sq. ft. on the top of the tank.

(b) A minimum end product strength of 4,000 pounds per square inch shall be used in the construction of the tank.

(c) The top, bottom, ends and sides of the tank shall have a minimum thickness of two and one half (2½) inches.

(d) The tank shall be reinforced by using a minimum

reinforcing of six (6) inch by six (6) inch No. 10 gauge welded steel reinforcing wire lapped at least six (6) inches. Other reinforcing methods may be used provided that such other methods can be demonstrated to the satisfaction of the cabinet to be equal, or superior to, the method described herein.

(e) The tank shall be so designed and constructed that all joints, seams, or other openings shall be watertight in use. Asphalt compounds, neoprene gaskets, or other acceptable sealant materials shall be used to insure watertightness.

(f) At least two (2) manholes shall be provided to permit access for maintenance of the tank. Manholes shall have [be] a minimum *dimension* of ten (10) inches [by ten (10) inches] and a maximum *dimension* of twenty-four (24) inches [by twenty-four (24) inches] measured on the bottom edge of the manhole opening into the tank. Manholes shall be located on each end of the tank over the inlet and outlet structures (baffles or tees). The manhole openings shall be beveled so as to adequately seal and support the manhole cover. The manhole cover shall possess sufficient strength to support a uniform load of 150 lb./sq. ft. without damage to the cover or tank and provide a means for removal (handles, etc.). [In addition to the manholes, a six (6) inch diameter riser pipe with a threaded cap or plug shall be provided, located near the inlet end of the tank, which shall be extended to grade to facilitate pumping with minimum disturbance to the tank and site.]

(g) Cast-in-place baffles, drop-in type baffles, and bolt-on tee-type baffle structures, at inlet and outlet ends of the tank shall have a minimum thickness of two (2) inches and be reinforced in the same manner as the tank. For cast-in-place baffles reinforcing wire [used in the baffles] shall extend into and along the tank sidewalls a minimum of six (6) inches for proper anchorage. For tanks using drop-in baffles, a molded in slot or groove with a minimum one (1) inch penetration into the tank sidewall shall be provided to retain the baffle. Such slot or groove shall be slightly tapered to produce a secured "wedge fit" baffle. For bolt-on tee-type baffle structures, stainless steel bolts, washers and nuts shall be used for anchorage. Such bolts shall be cast-in-place in the baffle or tank endwall and securely anchored by attachment to tank or baffle reinforcing material. On those tanks where baffle attachment bolts penetrate through the tank endwall suitable bushings or seals shall be used to render bolt holes watertight. Suitable sealants shall also be used on all baffle edges which contact the tank endwall to prevent shortcircuiting of tank contents.

(h) In lieu of baffles, sanitary tees of corrosion resistant materials (fiberglass, plastic, or cast iron) may be used as long as joints are properly sealed and the specified dimensions above and below the liquid level of the tank are maintained.

(i) Internal dimensions of the tank shall fall within plus or minus one (1) foot of the recognized proportional ratios of 2:1 [:1] to 3:1 [:1], the length being approximately two (2) to three (3) times the width [or the liquid depth]. The minimum liquid depth shall be thirty-four (34) [forty (40)] inches with maximum depth of fifty-four (54) inches depending upon tank capacity. The inlet and outlet pipe knockouts or holes shall be of sufficient diameter to accept a minimum four (4) inch diameter pipe and shall be so designed as to provide a minimum height difference of three (3) inches for the inlet pipe invert above the outlet pipe invert. Inlet and outlet holes shall be so located on the ends of the tank as to provide a minimum freeboard space of ten (10) inches to one (1) foot between the liquid level

and the inside top surface of the tank for scum storage. Both inlet and outlet baffles or tees shall extend above the liquid level of the tank to within at least two (2) inches but not less than one (1) inch of the inside top surface of the tank to contain scum and provide venting space for gases. *Baffle designs which extend to the inside top of the tank may be used provided that a slotted vent space of a minimum height of one (1) inch by four (4) inches in width is located at the juncture of the baffle and tank top in the center of the baffle.* The inlet tee or baffle shall extend below the liquid level between eight (8) to ten (10) inches, and the outlet baffle or tee shall extend downward to thirty-five (35) to forty (40) percent of the total liquid depth of the tank. When baffles are used, the distance between the outlet baffle and tank endwall shall be between four (4) to six (6) inches, and the distance between the inlet baffle and endwall shall be between six (6) to ten (10) inches.

(j) All tanks offered for sale or use in Kentucky shall bear, by imprint, stencil, or other acceptable means of marking, the manufacturer's name, the serial number assigned to the manufacturer's plans and specifications approved by the cabinet, and the liquid or working capacity of the tank. This imprint, stencil, or other marking shall be located to the right of the knockout or hole made for the outlet pipe on the outlet end of the tank.

(2) Constructed on site. Septic tanks constructed on site of cast-in-place concrete, concrete block, or brick shall be constructed to conform with the requirements in subsection (1) of this section except as follows:

(a) Cast-in-place concrete septic tanks shall have a minimum wall thickness of six (6) inches.

(b) Concrete block or brick septic tanks shall have a minimum wall thickness of at least six (6) inches when the design volume is less than 1,000 gallons and a minimum wall thickness of at least eight (8) inches when the design volume is 1,000 gallons or more. All septic tanks constructed of block or brick shall be plastered on the inside with a 1:3 mix (one (1) part cement, three (3) parts sand) of portland cement at least three-eighths (3/8) inch thick or the equivalent using other approved waterproofing material.

(c) The bottom and top of the constructed onsite septic tank shall be poured reinforced concrete with a minimum thickness of four (4) inches.

(d) For large capacity (5,000 gallons or more) cast-in-place concrete tanks, maximum liquid depth shall be sixty-six (66) inches.

(3) Prefabricated steel. Prefabricated steel septic tanks shall conform to the requirements listed under subsection (1)(a), (e), (f), (h), (i), and (j) of this section, in addition to the following:

(a) All prefabricated steel tanks shall be thoroughly coated on all surfaces with a minimum one-eighth (1/8) inch thick coating of liquid asphalt, mastic compound, plastic waterproofing compound, or liquid cured vinyl. Each such septic tank shall be accompanied on site delivery by a one-half (1/2) pint container of the coating material for use in touch-up coating of steel surfaces of the tank exposed through damage in shipping and handling. If such volume is insufficient to repair all damaged areas, additional coating material shall be secured by the installer.

(b) Coated steel baffles shall not be used in prefabricated steel tanks. Sanitary tees of approved plastic, fiberglass, or cast iron shall be required.

(4) Molded plastic, fiberglass. Septic tanks of molded plastic, fiberglass, or other such types of materials shall

conform to the requirements listed under subsection (1)(a), (e), (f), (h), (i) and (j) of this section, in addition to the following: Baffles, if used in lieu of sanitary tees, shall be molded or formed in place so as to be an integral part of the tank. Glued, riveted, or otherwise mechanically attached baffles are not permitted (solvent welding on plastic tanks and resin bonding on fiberglass are acceptable). Such baffles shall be formed of material equal in thickness and rigidity to the tank wall material.

Section 5. Aerobic Treatment Units. (1) Precast concrete tank. All precast concrete tank aerobic treatment units shall comply with the construction requirements of Section 4(1)(a), (b), (c), (d), (e), (f) and (j) of this regulation, in addition to the following:

(a) All cast-in-place baffles, compartment walls, dividers, weirs, and other devices or structural forms shall be a minimum thickness of two (2) inches and be reinforced in the same manner as the tank. Such reinforcing material shall extend into and along the tank sidewall a minimum of six (6) inches.

(b) Baffles, compartment walls, dividers, weirs, and other such devices or structural forms that are not cast-in-place or may be of dissimilar materials to the tank shall be of corrosion resistant materials, of sufficient structural strength and anchorage to the tank to prevent damage or dislodgement in normal operation, and where requiring routine maintenance, readily accessible through tank access manholes.

(c) All manholes providing access to mechanical or electrical components, chlorinating or other treatment devices, filters, etc., shall be provided with risers extending to grade to allow ready access for maintenance. Covers for such manholes or risers shall be provided with locks or other devices to prevent entry by unauthorized persons. On units which are intended to be installed flush with grade or above grade, which are designed to have an open top, suitable gridding, decking, or other such barriers to entry to the tank shall meet the 150 lb./sq. ft. support strength requirements and shall be so designed and installed to prevent entry to the tank or contact with its contents by unauthorized persons.

(2) Prefabricated steel. All prefabricated steel tank aerobic treatment units shall comply with the construction requirements listed in Section 4(1)(a), (e), (f), and (j), (3)(a); and Section 5(1)(b) and (c) of this regulation, in addition to the following: Coated steel, welded-in-place or mechanically-attached baffles, compartment walls, dividers, weirs, and other devices or structural forms shall receive additional corrosion protection materials or coatings when they are exposed directly through splash or immersion on two (2) or more surfaces or sides to tank liquid contents.

(3) Molded plastic, fiberglass. All molded plastic or fiberglass tank aerobic treatment units shall comply with the construction requirements listed in Section 4(1)(a), (e), (f), and (j) and Section 5(1)(b) and (c) of this regulation, in addition to the following: Baffles, compartment walls, dividers, weirs, and other such devices or structural forms, if cast or molded in place, shall be formed of material equal in thickness and rigidity to the tank material.

(4) Piping, mechanical devices and electrical equipment, filtration devices, and other appurtenances.

(a) All internal or external piping or conduits and fittings necessary to the transport of tank sewage contents between tank compartments, mechanical equipment, or other components of the treatment process involved shall

be of Schedule 40 PVC or ABS plastic pipe. Mixing of PVC and ABS or other dissimilar plastic pipe or fittings is prohibited.

(b) Mechanical fittings and connections where used to connect PVC or ABS piping to equipment or components shall be corrosion resistant and of a type, design, and construction compatible for use with the type of pipe involved.

(c) Mechanical aerators, stirrers, diffusers, rotating disks, and other devices used to provide direct exposure of atmospheric air to tank sewage contents shall be constructed of corrosion resistant materials and of sufficient structural strength to withstand normal operating stresses without damage or deformation resulting in system malfunction for the designed service life of the device.

(d) Pumps, electrical motors, or other such devices shall be of sealed or submersible design and construction when subject to submersion, splash, or corrosive atmosphere within the aerobic treatment unit. Such pumps, motors, or other such devices shall be properly sized and designed for the intended use and duty cycle.

(e) Filters, chemical feeders, and other such devices shall be constructed of corrosion resistant materials and possess sufficient strength to withstand normal operational stresses without damage or deformation resulting in system malfunction.

(f) Electrical controls, switches, ozone generators, ultraviolet generators, and other such devices relying upon electrical current for operation shall be designed and constructed as to be water and corrosive vapor proof in all portions of the device where electrical current carrying components are located. All such devices shall be properly grounded and otherwise designed, constructed, installed, and operated in accordance with National Electrical Code requirements.

(g) All fasteners, brackets, clips, hangers, or other such devices used in the anchorage, installation, mounting, or attachment of unit components and equipment both internal or external to the aerobic treatment tank shall be designed and constructed of materials possessing sufficient strength and corrosion resistance to withstand normal operational stresses without damage or deformation resulting in system malfunction.

(h) All components of aerobic treatment units which require routine maintenance shall be installed and located within the unit as to be readily accessible. Such components which require replacement, removal, or dismantling for routine maintenance shall be designed, constructed, and installed so as to facilitate their replacement, removal, or dismantling with simple tools. A maintenance instruction manual using pictures and simple language for identification of unit components, maintenance to be performed, components needing routine replacement, removal or dismantling procedures, maintenance interval, and simple troubleshooting procedures shall be included with all units. Such manual shall be provided to the ultimate operator or user of the unit. When aerobic treatment units are to be installed by other persons, rather than the manufacturer or his agents, a detailed installation manual shall be supplied outlining proper installation procedures including hook-up to an electrical power source, unit start-up procedures, and necessary adjustments or calibrations to be made to meet manufacturer's operating specifications for effluent quality.

Section 6. Dosing and Holding Tanks. (1) All dosing and holding tanks shall comply with the general construction requirements listed in Section 4 of this regulation for

septic tanks, based upon the type of material used in their construction, in addition to the following:

(a) Access manholes for dosing or holding tanks shall be extended to grade through the use of suitable risers to permit ease of access for maintenance and/or pumping.

(b) Such manholes in dosing tanks shall provide a minimum opening of eighteen (18) inches by eighteen (18) inches into the tank. Manhole riser lids or covers shall be designed and constructed so as to be watertight and, through the use of locks, locking devices, or other means, prevent access to the tank by unauthorized persons.

(c) All dosing or holding tanks, due to their frequently empty or partially filled condition, shall be designed or installed (using suitable anchoring devices or anti-flotation devices) to prevent flotation or verticle shifting due to groundwater pressure.

(2) All dosing and holding tank equipment, controls, and appurtenances shall comply, where applicable, with the requirements of Section 5(4)(a), (b), (d), (f), (g), and (h) of this regulation, in addition to the following:

(a) High water alarms, including an audible alarm system within the structure served by the dosing or holding tank, shall be installed in such tanks and calibrated to sound an alarm whenever the tank liquid level reaches eighty-five percent (85%) of capacity.

(b) When pumps are used for dosing effluent into the lateral field system or are used for lifting effluent to a lateral field system above the elevation of the dosing tank, electrically or mechanically operated switch controls shall be provided to permit automatic operation of such pumps. Manually operated pump controls are not permitted. When pumps are used, they shall be installed in an elevated position in respect to the tank bottom, by placement on stands designed for such purpose, concrete blocks, or through the use of suitable hangers to allow for sludge storage space and prolong service life of the pumps. Elevation distance from the tank bottom shall be a minimum of eight (8) inches.

(c) In lieu of pumps, automatic dosing siphons may be used for lateral field dosing where a suitable downhill gradient exists from the elevation of the siphon to the lateral field system.

Section 7. Distribution Devices. (1) Precast concrete.

(a) All precast concrete distribution boxes shall be designed and constructed to provide sufficient strength and structural integrity to withstand a vertical uniform load of 150 lb./sq. ft. on the top of the box.

(b) A minimum end product strength of 4,000 pounds per square inch shall be used in the construction of the box and lid.

(c) A minimum wall thickness of one and one-half (1½) inches shall be used in the construction of distribution box bottoms, sidewalls, and lids and shall be reinforced by a minimum No. 10 gauge six (6) inch by six (6) inch welded steel reinforcing wire, or equivalents, as approved by the cabinet.

(d) Distribution box lids or covers shall meet the requirements of paragraph (a) of this subsection and shall be provided with suitable handles for removal.

(e) Knockouts or holes for inlet and outlet piping shall be of sufficient diameter to accept four (4) inch diameter piping but no more than five (5) inches in diameter at the inside surface of the box.

(f) All distribution devices offered for sale or use in Kentucky shall bear, by imprint, stencil, or other acceptable means of marking, the manufacturer's name and the

serial number assigned to the manufacturer's plans and specifications approved by the cabinet. This imprint, stencil, or other marking shall be located on the inlet end of the device. Low pressure pipe manifolds shall meet the identification requirements for plastic piping in Section 8 of this regulation.

(2) Molded plastic and fiberglass. Molded plastic or fiberglass distribution boxes shall be designed and constructed to meet the requirements listed in subsection (1)(a), (d), (e), and (f) of this section.

(3) Equal flow type design standards.

(a) Outlet holes or knockouts in equal flow boxes shall be spaced a minimum of seven (7) inches on centers to permit access for application of waterproofing sealants around lateral piping and the external surface of the box sidewall or endwall. Outlet holes or knockouts shall be located a minimum distance of six (6) inches on centers, on a single plane, above the inside bottom surface of the box and a minimum of three (3) inches on centers from adjacent sidewalls in the outlet portion of the box. At the inlet portion of the box a minimum distance of eight (8) inches on centers shall be maintained between outlet holes and the sidewall or endwall to allow for the placement of a baffle to retard incoming effluent velocity.

(b) Centerline of the inlet hole or knockout shall be a minimum distance of one and one-half (1½) inches to a maximum of three (3) inches above the centerline of the outlets.

(c) Provision shall be made on all equal flow boxes for the insertion of a baffle on the inlet end of the box. Such provision may take the form of a double flange, molded or cast-in slot, or other acceptable means to retain the baffle in place. Baffle material and construction shall be equal to that used in the box itself. Baffles and their mounts or retainers shall be so designed as to provide a passageway for reduced velocity effluent between the box bottom and bottom edge of the baffle of no more than two (2) inches in height. The baffle shall extend to one (1) inch above the top of the inlet.

(d) Equal flow boxes shall be designed so as to provide unobstructed access, on removal of the lid or top, for direct, simultaneous viewing of all outlets to facilitate the performance of "water leveling" procedures during installation.

(4) Hillside or drop box type design standards.

(a) Lateral outlet holes or knockouts shall be located a minimum of four (4) inches on centers, on a single plane above the inside bottom surface of the box, and a minimum of three (3) inches on centers from adjacent sidewalls.

(b) Centerline of the inlet hole or knockout shall be a minimum of five (5) inches above the centerline of the lateral outlets and a minimum of three (3) inches above the centerline of the supply line outlet going to the next box in series.

(c) Hillside or drop boxes shall be designed so as to provide sufficient separation distance (twelve (12) inches or greater recommended) between the inlet sidewall and supply line outlet sidewall to minimize the risk of short-circuiting of effluent under heavy flow conditions or on steep hillsides where gradient induced flow velocity is created. In lieu of this requirement, box designs offsetting the vertical centerlines of inlets and supply line outlets may be employed.

(5) Plastic low pressure pipe manifolds. All plastic pipe, fittings, and connectors used in low pressure pipe supply lines and manifolds shall be of Schedule 40 PVC or ABS construction and materials.

(6) Alternating valves and devices design standards.

(a) Alternating valves and devices shall meet the general design and construction standards listed in subsection (1)(a) and (d) of this section, and if constructed of precast concrete, paragraphs (b) and (c) as well.

(b) All alternating valves and devices shall be designed and constructed to provide a positive seal to each outlet when in a closed position. The valving device shall be constructed of corrosion resistant materials and of sufficient strength to withstand normal operational stresses without damage or deformation resulting in valve malfunction.

(c) All alternating valves and devices shall be fitted with risers and watertight lids or covers, extending to grade, which will permit unobstructed access for maintenance, inspection and operation.

Section 8. Piping, Fittings and Connectors. (1) Non-perforated pipe—gravity flow usage.

(a) All non-perforated piping used for gravity flow carriage of effluent between septic tanks in series, septic tanks or other treatment units and distribution and/or alternating devices, and for two (2) feet into lateral trenches or beds from distribution devices shall be at least SDR 35 ASTM-D3034 and D3033 for PVC and ASTM-D2751 ABS. [and] 1,500 lb. crush ASTM-F810 for polyethylene may be used between distribution devices and lateral trenches or beds.

(b) All such non-perforated piping shall be of a minimum internal diameter of four (4) inches.

(c) Each standard section of pipe as supplied by the manufacturer shall be plainly marked, embossed, or engraved showing the manufacturer's name or hallmark, the SDR 35 ASTM D3034, D3033, or D2751, or 1,500 lb. crush ASTM-F810 designation, and the type of pipe material (PVC, ABS, or polyethylene).

(2) Non-perforated pipe—pressure usage.

(a) All non-perforated piping used for pressurized carriage of effluent between dosing or pumping and distribution and/or alternating devices shall be of 160 psi PVC or ABS.

(b) 160 psi polyethylene pipe or equivalent may be used in all applications listed above in lieu of PVC or ABS piping, except in the construction of any portion of a low pressure pipe (LPP) system where PVC or ABS pipe shall be required.

(c) Each standard section of pipe as supplied by the manufacturer, or in the case of polyethylene or equivalent piping rolls at not greater than ten (10) foot intervals, shall be plainly marked, embossed, or engraved showing the manufacturer's name or hallmark, the 160 psi designation, and the type of pipe material.

(d) All such pipe used on an individual low pressure pipe (LPP) system installation shall be of the same type of material—mixing of PVC, ABS, polyethylene, or other equivalent piping is prohibited.

(3) Perforated pipe—gravity flow usage.

(a) All perforated pipe used for gravity flow carriage and distribution of effluent within lateral trenches, beds, mounds, or other such applications shall meet 1,500 lb. crush ASTM-F810 standards for rigid piping and ASTM-F405 and [F481] for corrugated semi-rigid piping.

(b) Each standard section of pipe as supplied by the manufacturer shall be plainly marked, embossed, or engraved showing the manufacturer's name or hallmark, the type of pipe material, and showing the product meets applicable ASTM standards and a bearing load of 1,500 lbs. per foot. In addition, a painted or other clearly mark-

ed line or spot shall be marked on each section to denote the top of the pipe.

(c) All such gravity flow usage perforated pipe shall have a minimum internal diameter of two (2) inches.

(d) On two (2) inch or three (3) inch diameter pipe: if one (1) row of holes is used, it shall be located directly opposite the top marking on the pipe and holes shall be three-eighths (3/8) inch in diameter; if two (2) rows of holes are used, they shall be one-quarter (1/4) inch to five-sixteenths (5/16) inch in diameter, and evenly spaced and placed within an arc of 120 degrees on the bottom of the pipe. Spacing of holes longitudinally shall be between eight (8) to twelve (12) inches on centers.

(e) All four (4) inch diameter or greater pipe shall have at least two (2) rows of holes five-sixteenths (5/16) to one-half (1/2) inch in diameter, evenly spaced and placed within an arc of 120 degrees on the bottom of the pipe. If three (3) holes are used, the center row shall be directly opposite the top marking. Spacing of holes longitudinally shall be between *three (3)* [four (4)] to twelve (12) inches on centers.

(4) Perforated pipe—pressure usage, low pressure pipe systems (LPP).

(a) Pipe used for pressure carriage and distribution of effluent within lateral trenches, beds, mounds, or other low pressure pipe (LPP) applications shall be of 160 psi PVC or ABS construction.

(b) Pipe shall meet the requirements listed under subsection (2)(c) and (d) of this section.

(c) Minimum pipe internal diameter shall be determined on a case-by-case basis, based upon system size, configuration, and other factors necessary in the design of a low pressure pipe system. In no case shall the internal diameter be less than one (1) inch.

(d) Pipe perforations shall run in a straight line along the bottom of the pipe. Where pre-perforated pipe is unavailable, perforations shall be hand-drilled *and* deburred [and countersunk]. Hole diameters and hole spacing shall be determined on a case-by-case basis relative to design requirements of the low pressure pipe system. Hole sizes may range from three-thirty-seconds (3/32) to one-fourth (1/4) inch in diameter, and hole spacing from three (3) to five (5) feet depending on design requirements.

(5) Fittings and connectors.

(a) Piping elbows, tees, wyes, reducers, end caps, plugs, connectors, and other such fittings shall be designed and constructed for the intended use.

(b) Fittings and connectors shall be formed of materials capable with the piping to which they are joined and meet the same standards as that piping. Mixing of different pipe and fitting materials except when expressly designed and constructed for such purpose is prohibited.

(c) Joints formed between fittings, connectors, and/or piping shall be rigid and watertight and shall be made by the methods (solvent welding, chemical fusion, mechanical compression, etc.) applicable to the materials joined.

Section 9. Trench Fill and Barrier Material. (1) Trench fill material.

(a) Gravel or crushed dolomitic limestone shall be used for bedding and trench fill material for gravity flow lateral lines. Foreign matter, dust, and fines shall be removed. Such material shall be of sufficient hardness to attain a three (3) on the Moh's Scale (material hard enough to scratch a copper penny without crumbling or powdering shall be considered acceptable). A size range of three-quarters (3/4) inch to two and one-half (2 1/2) inches in

rough diameter shall be used, and material shall be graded for uniformity in size.

(b) Other materials such as blast furnace slag may be considered for usage if such materials can meet or exceed all of the requirements of paragraph (a) of this subsection.

(c) Pea gravel shall be used for bedding and trench fill material for low pressure pipe systems.

(d) Graded sands used for the construction of mound systems or filter units shall be sized according to the design requirements of the system or unit involved.

(e) Crushed rock, gravel, pea gravel, sand, or other such materials meeting the requirements of this section for use as trench fill, lateral bedding material, mound fill, or filter material may be used, as applicable, in the construction of curtain, vertical, and underdrain groundwater drainage systems.

(2) Trench barrier material.

(a) Straw, hay, grass clippings, or synthetic filter fabrics shall be used in all lateral trenches, beds, mounds, sub-surface sand filters, or groundwater drainage systems to provide a barrier to the entrance of soil backfill into the rock, gravel, pea gravel, or sand fill in such trenches, beds, mounds, filters, or drainage systems.

(b) Other similar materials may be considered for such usage provided that they can be demonstrated to perform in an equivalent manner with the above and do not restrict air movement within the trench, bed, mound, filter or drainage system.

Section 10. Effective Date. This regulation shall become effective on January 1, 1985.

C. HERNANDEZ, Commissioner

ADOPTED: August 2, 1984

APPROVED:

E. AUSTIN, JR., Secretary

RECEIVED BY LRC: August 15, 1984 at 12 noon.

CABINET FOR HUMAN RESOURCES

Department for Social Services

Division for Aging Services

Amended After Hearing

905 KAR 8:120. Homecare policy manual for the elderly.

RELATES TO: KRS 205.455 to 205.465

PURSUANT TO: KRS 194.050

NECESSITY AND FUNCTION: KRS 205.460 directs [authorizes] the Cabinet for Human Resources to provide, within budgetary limitations, in-home services for the aging to include, but not necessarily limited to, homemaker services, *chore services*, *core services*, [home-help therapy services, day care services,] home delivered meal services, [transportation services, foster care services,] and *home health aid* [health services]. The function of this regulation is to establish policies and procedures for carrying out this mandate.

Section 1. The Cabinet for Human Resources hereby adopts, by reference, the "Homecare Policy Manual for the Elderly," completed as of May 11, 1984, as the operating policies and procedures to be followed by contractors participating in the Department for Social Services Homecare Program. This manual includes instructions regarding extraordinary medical expenses, assessments and reassessments, assessment and case management services, units of service, service definitions, reporting and format procedures, and Title III

program income and other relevant components of the program. The Homecare Policy manual may be reviewed in the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky, or any of the department's field offices located in each of the 120 counties.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 6, 1984

FILED WITH LRC: August 7, 1984 at 11:30 a.m.

Proposed Amendments

CABINET OF THE GENERAL GOVERNMENT Board of Physical Therapy (Proposed Amendment)

201 KAR 22:031. Therapist's licensing procedure.

RELATES TO: KRS 327.050, 327.060, 327.080

PURSUANT TO: KRS 327.040

NECESSITY AND FUNCTION: The purpose of this regulation is to clearly define the procedure for issuing licenses. This regulation standardizes the administrative procedures involved in granting a physical therapy license through the various means of qualifying.

Section 1. *Beginning October 6, 1984 and thereafter, the fee for application for licensure by examination received by the executive secretary of the board during the first year of the biennial licensure term shall be \$205. This application could result in a temporary permit and license which would be valid for more than one (1) year. [one hundred twenty-five (125) dollars by money order, cashier's or certified check payable to the Kentucky State Treasurer.] The fee for application received by the executive secretary in the second year of a biennial licensure term shall be \$165. This application could result in a temporary permit and license which would be valid for one (1) year or less. All application fees shall be paid by cashier's or certified check or money order payable to the Kentucky State Treasurer. Upon approval as a candidate by the board, the candidate for licensure by examination will be notified of the date, place and time of the examination by the board. Examinations will be held at a time and location set by the board. The board will administer the Professional Examination Service of the American Public Health Association examination and/or other examinations as determined by the board to those qualified candidates permitted to sit for the examination.*

Section 2. If an applicant becomes a candidate for licensure by examination after the fifth day of the month preceding the month that the next examination is to be held and credentials of the applicant are in order and fees submitted and the board is in receipt of a completed supervisory agreement statement, then a temporary permit [license] shall be issued to be in force until sixty (60) days after the examination held six (6) months later, [or] until the results of that examination are received and processed, or until the regularly scheduled renewal date of all licenses to practice, March 31 of each

uneven numbered year, whichever comes first. A temporary permit [license] requires that the physical therapist applicant shall work only under the supervision of a physical therapist fully licensed in Kentucky. Supervision means that the responsible therapist be available and accessible by telecommunication to the person granted a temporary permit [temporarily licensed therapist] at all times during the working hours of the person with a temporary permit [temporarily licensed therapist] and be responsible for the direction of the actions of the person supervised when services are performed by the person with a temporary permit [temporarily licensed physical therapist]. The board shall issue a temporary permit [license] only to:

(1) Graduates who have applied for licensure by examination, have met all requirements and are sitting for the next examination or who have taken that examination and have not yet been notified of the results.

(2) Applicants for licensure by endorsement who have met all other requirements but must take one (1) or more parts of the examination again.

(3) Foreign-trained physical therapist[s] applicants who have met all requirements for licensure application and paid all fees provided for in KRS 327.060(2), except that the applicant has not yet taken and successfully completed the PES examination and/or has not yet begun a one (1) year board approved employment as a physical therapist.

(4) Graduates who have applied for licensure by PES examination in another state and who have met all requirements for Kentucky application but who have not yet taken and/or been notified of successful completion of that examination.

Section 3. The applicant shall have three (3) attempts to pass the examination except that no applicant may work with a temporary permit longer than twenty-one (21) months. The original application fee covers the first attempt. The cost of the examination to the board plus an administrative fee of forty-seven (47) dollars and fifty (50) cents must be assumed by the applicant for the second and third attempts. The temporary permit [license] will be issued after request for re-examination on the second and third attempts and payment of the required fee at the discretion of the board. If the applicant fails on the third attempt, the temporary permit [license] is revoked and the applicant may no longer be employed in Kentucky as a physical therapist. The applicant may reapply after one (1) year but must submit a new ap-

plication fee and no temporary *permit* [license] will be issued.

Section 4. Candidates examined by boards of other states and territories shall have registered their PES scores with the Interstate Reporting Service of the Professional Examination Service. The applicants' scores, calculated by the PES to meet Kentucky board requirements, shall be submitted by the *Interstate Reporting Service* to this board for consideration of licensure.

Section 5. The candidate for licensure by endorsement shall submit the regular license application form, shall arrange to have submitted proper evidence that he has been examined by the PES and pay an application fee proper for the period within the biennial licensure term in which he is applying. [of 100 dollars] Beginning December 15, 1984 and thereafter, the fee submitted for application received by the executive secretary of the board in the first year of a biennial licensure term shall be \$140. This application could result in a license valid for more than one (1) year. An application fee received by the executive secretary of the board in the second year of a biennial licensure term shall be \$100. This application could result in a license valid for one (1) year or less. Application fees shall be paid by money order, cashier's or certified check payable to the Kentucky State Treasurer. The Kentucky State Board of Physical Therapy will endorse a candidate who has been examined by the Professional Examination Service, meets the board's requirements of national average raw score minus one and five tenths (1.5) standards deviation set equal to a converted score of seventy-five (75) on each part of the examination, and whose physical therapy license has never been revoked or suspended, and is currently not on probation or under disciplinary review in another state.

Section 6. The candidate for licensure through reinstatement may receive renewal of his license without further examination upon requesting renewal, furnishing his complete current home and physical therapy work addresses and telephone numbers, payment of the renewal fee of eighty (80) dollars [forty (40) dollars] plus [and] reinstatement fee of twenty-five (25) dollars [thirty (30) dollars]. The fee for reinstatement received which will grant licensure for a period of one (1) year or less shall be forty (40) dollars plus a reinstatement fee of twenty-five (25) dollars. [by] Reinstatement fees shall be paid by money order, cashier's or certified check made payable to the Kentucky State Treasurer and should be sent [, and mailing these] to the executive secretary of the board. Therapists who have not been licensed for three (3) years may, in addition, be required to appear before the board and/or show evidence of professional competency. Reinstatement of the candidate will be at the board's discretion after evaluation of said evidence.

Section 7. Beginning December 15, 1984, a license, which shall be in effect until March 31, 1987 [the next January 31st] and thereafter, March 31st of the next uneven numbered year shall be issued by the board as soon as it receives notice from the Professional Examination Service that the candidate by examination has received a passing grade which shall be set based on the national raw average score minus one and five tenths (1.5) standard deviation set equal to a converted score of seventy-five (75) on each part of the examination, and when candidates by endorsement and foreign trained candidates [reinstatement] have met all requirements.

Section 8. The executive secretary of the board may function administratively to review, process and interpret all applications received by the board and correspond with the applicants accordingly.

JEAN M. DAVIS, Chairman

APPROVED BY AGENCY: June 29, 1984

FILED WITH LRC: August 13, 1984 at 11:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984 at 10 a.m. in Room 103 of the Capitol Annex. Those interested in attending this hearing shall contact in writing by September 16, 1984: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, KY 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly, Executive Secretary

(1) Type and number of entities affected: Exam applicants = 50/year, Applicants for licensure by endorsement = 60 per year.

(a) Direct and indirect costs or savings to those affected: Increased cost to exam applicants is basically \$40 each (\$80) for those who could be licensed for two years. Cost to endorsement applicants is increased by \$40 to those possibly being issued a two year license. (However, will not be renewing in that period.)

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Increased fee for exam candidates is offset by increase in cost of exam to the board and cost of renting examining site which was previously free.

1. First year:

2. Continuing costs or savings: Will continue to offset increased cost of administering exam.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No change

(3) Assessment of anticipated effect on state and local revenues: No effect

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None Known

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: A maximum time in which a candidate for licensure could work with a temporary permit was included so that should an applicant decide to not be examined when scheduled he would be treated the same as an applicant who fails to pass the exam within the allotted period for three takes.

In all instances, fees for application are prorated according to the period within the biennial licensure term in which an applicant applies. This was proposed to not place an undue burden on an applicant who might be caused to renew his license shortly after obtaining it.

The reinstatement fee was lowered to meet statutory requirements.

Tiering:

Was tiering applied? No. Physical therapist applicants for licensure all have equal rights and the regulations are implemented uniformly.

**CABINET OF THE GENERAL GOVERNMENT
Board of Physical Therapy
(Proposed Amendment)**

201 KAR 22:040. Procedure for renewing licenses.

RELATES TO: KRS 327.050

PURSUANT TO: KRS 327.040

NECESSITY AND FUNCION: Provides specific directions for the *biennial* [annual] renewal of the physical therapy license. The billfold license is a means of identifying those persons holding themselves out as a licensed physical therapist. [This mechanism may be beneficial upon the visitation of a board member to the clinical setting.]

Section 1. *Beginning with licenses valid until January 31, 1985 and thereafter beginning March 31, 1987, the licensed physical therapist will automatically receive renewal of licensure upon payment on or before March 31st [January 31] of each uneven numbered year of a renewal fee of eighty (80) dollars [forty (40) dollars] by money order [, certified or cashier's] or check made payable to the Kentucky State Treasurer and current complete home and all physical therapy business locations and addresses and telephone numbers and sent to the executive secretary of the board. If payment and complete information are [is] not received by the executive secretary by March 31 [January 31] of each uneven numbered year, the license shall lapse.*

Section 2. Upon initial licensing and each subsequent renewal, all therapists will be furnished a validation that must be posted to the original certificate and *displayed* [kept] at the primary physical therapy business address.

JEAN M. DAVIS, Chairman

APPROVED BY AGENCY: June 29, 1984

FILED WITH LRC: August 13, 1984 at 11:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984 at 10 a.m. in Room 103 of the Capitol Annex. Those interested in attending this hearing shall contact in writing by September 16, 1984: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, KY 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly, Executive Secretary

(1) Type and number of entities affected: Approximately 750 physical therapists.

(a) Direct and indirect costs or savings to those affected: Beginning 1/85, licensure renewal will be biennial.

1. First year: Cost of renewal will be doubled but will be valid for 27 months.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Decreased paperwork for renewal applicants.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Biennial renewal will save the board money in postage, manpower and paper. The bulk of board's revenue will come in immediately before the start of a biennium.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Less paperwork

(3) Assessment of anticipated effect on state and local revenues: No effect

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. Physical therapist licensure is implemented uniformly in regard to all physical therapists who have equal rights and responsibilities.

**CABINET OF THE GENERAL GOVERNMENT
Board of Physical Therapy
(Proposed Amendment)**

201 KAR 22:052. Refusal, revocation, suspension or probation of license or certificate; administrative warning to licensee or certificant.

RELATES TO: KRS 327.070, 327.090

PURSUANT TO: KRS 327.040

NECESSITY AND FUNCTION: The board has the responsibility of enforcing the definitive procedures of refusal, revocation, suspension, or placing on probation, the license of any physical therapist and the certificate of any physical therapist's assistant *or issuing an administrative warning to any licensee or certificant.* Often questions concerning the law or possible violations can be resolved by mutual discussions; however, these guidelines are to be followed when the board receives, or initiates, a written and signed explicit complaint. All aspects of an investigation of a complaint shall be held strictly confidential until after enforcement action is completed or a decision is made to take no action.

Section 1. (1) Complaint. A complaint that a person (hereinafter called respondent) has failed to or refused to obey the requirements of KRS Chapter 327, the rules and regulations of the board or its "Standards of Practice Guidelines" shall be made in writing to or by the Kentucky State Board of Physical Therapy. The complaint must be a clear and concise statement of violation and it must be signed by the complainant. The complainant need not be a physical therapist or assistant. Within ten (10) days the chairman of the board shall acknowledge to the complainant receipt of the complaint by registered or certified mail.

(2) Notice to respondent. Within ten (10) days after receipt of the written complaint, the chairman of the board shall notify the respondent of the complaint by registered or certified mail, return receipt requested. This notice shall require the respondent to reply to the complaint by registered or certified mail to the board within ten (10) days after receipt of notice.

(3) Investigation of complaint. The investigation shall be a thorough, objective review of the circumstances under which the alleged violation took place. Two (2) members of the board or its official representative may wish to discuss the complaint with the respondent or complainant to collect and organize more information, but not make a decision. An investigative file shall be formed to include all information and documents acquired during the investigation.

(4) Arrangement for a hearing. After receiving respondent's written reply and after possible discussion between the board and respondent, the board shall determine if a hearing will be necessary to further investigate the complaint. If no hearing is necessary or all parties come to an agreement, the board shall advise all parties that the matter is determined to be settled or closed. If a hearing is necessary, the board shall give all involved parties thirty (30) days notice of the date, time and place the hearing will be held. The board shall call a hearing if it may revoke, refuse, or suspend a license or certificate or place a licensee or certificant on probation or issue an administrative warning to a licensee or certificant so that the licensee or certificant can show evidence why his/her license or certificate should not be revoked, refused, or suspended or that the licensee or certificant should not be placed on probation or receive an administrative warning.

(5) Hearing. At the hearing the respondent has the right to be present and to be represented by counsel. The board may or may not wish to follow formal rules of evidence, but the board may exclude irrelevant or repetitious evidence. The hearing may be conducted to bring out pertinent facts, including the calling of witnesses and the production of pertinent documents. Testimony shall be under oath or affirmation. The hearing shall be recorded. All documents accepted by the board, including the investigative file, shall be made part of the record of the hearing.

(6) Findings and decisions. After the hearing the board shall make findings as to all questions of fact and all questions of interpretation of KRS Chapter 327, board rules and regulations and the "Standards of Practice Guideline." The board may close the matter or settle, and notify all persons involved, or it may take appropriate disciplinary action after conferring with the Attorney General to assure that all guidelines have been followed correctly.

Section 2. Any person aggrieved by an order of the board denying, suspending or revoking his/her license or certificate may appeal to the Franklin Circuit Court within thirty (30) days after entry of said order for appropriate relief. Examination of the record of the board's action will be done for the purpose of determining whether the board abused its discretion.

Section 3. The Kentucky State Board of Physical Therapy hereby adopts a "Standards of Practice Guidelines" for evaluating the performance of a physical therapist or physical therapist's assistant. These guidelines being one and the same as adopted by

the Kentucky State Board of Physical Therapy at its meeting on May 11, 1984 [March 27, 1981] and filed with the board minutes.

JEAN M. DAVIS, Chairman

APPROVED BY AGENCY: June 29, 1984

FILED WITH LRC: August 13, 1984 at 11:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held September 21, 1984 at 10 a.m. in Room 103 of the Capitol Annex. Those interested in attending this hearing shall contact in writing by September 16, 1984: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly, Executive Secretary

(1) Type and number of entities affected: All licensees and certificants (850 persons).

(a) Direct and indirect costs or savings to those affected: No cost.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No changes.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No changes.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The Standards of Practice Guidelines adopted by the Board at its meeting May 11, 1984 represents amendments to the document in force which brings it into compliance with the Code of Ethics, Guide for Professional Conduct and Guide for the Conduct of the Physical Therapist's Assistant which is voluntarily adopted by the majority of physical therapists and assistants in the nation. The board is charged in the present standards with monitoring and timely revision of these standards. The revisions broaden the ethical responsibilities of therapists and assistants. The principle relating to advertising has been revised to eliminate restrictions except those related to consumer protection. The sections relating to Supervisory Relationships, Standards for Physical Therapy Supportive Personnel, Reevaluation of Patients by Physical Therapists and Physical Therapy Records remain the same.

Tiering:

Was tiering applied? No. Physical therapist licensure

and physical therapist's assistant certification is implemented uniformly in regard to all licensees and certificants who have equal rights and responsibilities.

CABINET OF THE GENERAL GOVERNMENT
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:070. Requirements for foreign-trained physical therapists.

RELATES TO: KRS 327.060

PURSUANT TO: KRS 327.040

NECESSITY AND FUNCTION: This regulation establishes the requirements of a foreign-trained physical therapist to permit the therapist to become licensed in the state of Kentucky. Because of variances in curriculums of foreign countries, specific requirements are needed to assure that the applicant possesses adequate educational and clinical preparation.

Section 1. The following requirements for a foreign-trained physical therapist to become licensed must be fulfilled:

(1) Furnish the board a report of a board approved [appropriate] credentialing agency for educational status. [The board may have these reports reviewed.] The educational requirements of licensure require an applicant to have satisfactorily completed at least 120 semester credits in a program equivalent to a U.S. Bachelors degree in Physical Therapy. At least sixty (60) of these semester credits must be in professional physical therapy courses as described and distributed in the approved credentials form. At least fifty-eight (58) of these semester credits must be in general education courses as described and distributed in the approved credentials form, of which at least forty-five (45) semester credits must be completed at the time of application. The remaining semester credits in general education would be completed by College Level Entrance Proficiency (CLEP) or at a board approved educational institution.

(2) The applicant for licensure by examination must have English as his native language or have submitted the results of a Test of English as a Foreign Language (TOEFL) with a score of at least 550 or the Test of Spoken English (TSE) with a total score of at least 220. [Present oneself for an interview by the state board demonstrate during the interview proficiency with the use of the English language.]

(3) Furnish the board evidence of legal permission, as furnished by the U.S. Department of Immigration, for employment in this country.

(4) Submit a satisfactorily completed application and appropriate fee.

(5) [(4)] Successful completion of one (1) year, totaling at least 1000 clock hours of supervised practice under a physical therapist licensed under this chapter. The supervised practice will be in an acute care facility serving both in and out patients that has been approved by the board. The applicant will work only with on-site supervision until a score of three and five-tenths (3.5) on a four (4.0) scale has been achieved utilizing the board provided clinical evaluation form. Evaluations will be submitted to the board quarterly by the clinical supervisor. The applicant will work under supervision, as do other applicants with a temporary permit after achieving the required score of three and five-tenths (3.5). This requirement may be satisfied by one (1) year of

supervised practice in a state with license requirements at least comparable to those of Kentucky or by the consent of the board. [If the clinical experience is in Kentucky,] Evidence of that experience must be in writing confirming [of] successful completion and satisfactory performance. [is required.]

(6) [(5)] Successful completion of the examination as specified in KRS 327.050. The examination, when next offered by the board for other candidates, shall [may] be taken [at any time the candidate desires] after the applicant becomes a candidate for licensure, unless excused by the board.

[Section 2. All documents submitted to the board must be in native script accompanied by a certified complete translation.]

Section 2. [3.] The following pertain to temporary permits: (1) Following completion of Section 1(1) to (4) of this regulation and submission of an approved Supervisory Agreement Statement, and [the] applicant by examination, an applicant who needs to complete his general education requirements and/or an applicant who has not yet satisfactorily completed a year of supervised practice as a physical therapist will be issued a temporary permit [license] to practice under the [direct] supervision of a designated Kentucky licensed therapist.

(2) All requirements for licensure shall be completed within the maximum period of twenty-one (21) months in which an applicant may work as a physical therapist with a temporary permit. If not completed within that time period, the temporary permit is revoked and the applicant may no longer work in Kentucky as a physical therapist. An applicant who has failed to pass the examination may reapply in one (1) year as per 201 KAR 22:031, Section 3. Applicants who have failed to complete general education requirements may reapply when those requirements have been met.

JEAN M. DAVIS, Chairman

APPROVED BY AGENCY: June 29, 1984

FILED WITH LRC: August 13, 1984 at 11:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held September 21, 1984 at 10 a.m. in Room 103 of the Capitol Annex. Those interested in attending this hearing shall contact in writing by September 16, 1984: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical therapy, 1614 Dunbarton Wynde, Louisville, KY 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly

(1) Type and number of entities affected: Physical therapist trained in a foreign country. Approximately four (4) a year.

(a) Direct and indirect costs or savings to those affected: The only increased cost for an applicant might be the cost of taking the Test of English as Foreign Language (TOEFL) or Test of Spoken English (TSE). The fees for TOEFL range from \$26 to \$32 and TSE takes \$40. Conversely, an applicant would no longer be required to appear before the board for an interview.

An applicant who had less than the required fifty-eight (58) hours in general education requirements would be required to complete college general education hours in an approved college or CLEP those hours.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: There are no direct or indirect costs or savings to the Board of Physical Therapy. However, the board is released from making subjective judgments relative to an applicant's ability to communicate in English when English is not the applicant's native language and when the applicant has not previously obtained a license to practice physical therapy in the USA. The board was guided in setting required scores for TOEPL using University guidelines for graduate students and teaching assistants.

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Slightly increased with quarterly reports from clinical supervisor.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: By more clearly defining the educational requirements of a foreign-trained physical therapist we will have the same requirements for all applicants. However, because some countries do not have the same number of credit units in general education as a requirement for licensure, the board proposes to allow persons with at least forty-five (45) of the required hours to CLEP or complete their requirements while working with a temporary permit.

By assuring at least a base line of competency in English communication, the board will be more assured that an applicant will be successful in passing the licensure examination and in clinical work.

Before this proposed amendment, a foreign-trained applicant was required to work under direct supervision for one (1) year and be granted a letter of successful completion from his physical therapist supervisor. This regulation penalized the applicant who spoke English fluently and whose skills were comparable to his U.S. trained supervisor. The board proposes that applicants be evaluated quarterly by their supervisor and when a passing score is achieved on an evaluation the applicant would no longer require direct supervision.

Tiering:

Was tiering applied? No. All foreign-trained applicants will be treated uniformly.

CABINET OF THE GENERAL GOVERNMENT
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:106. Assistant's certification procedure.

RELATES TO: KRS 327.040

PURSUANT TO: KRS 327.040

NECESSITY AND FUNCTION: Because certification may be achieved in several ways, this regulation defines the types of candidates, the fee and procedure for making application to the State Board of Physical Therapy as a candidate for certification as a physical therapist's assistant.

Section 1. *Beginning October 6, 1984 and thereafter, the fee for application for certification by examination received by the executive secretary of the board during the first year of the biennial licensure term shall be \$200. This application could result in a temporary permit and certificate which would be valid for more than one (1) year [shall be \$105 by money order, cashier's or certified check payable to the Kentucky State Treasurer]. The fee for application received by the executive secretary in the second year of a biennial licensure term shall be \$160. This application could result in a temporary permit and certificate which would be valid for one (1) year or less. All application fees shall be paid by cashier's or certified check or money order payable to the Kentucky State Treasurer. Upon approval as a candidate by the board, the candidate for certification by examination will be notified of the date, place and time of the examination. Examination will be held at a time and location set by the board. The board will administer the Professional Examination Service of the American Public Health Association examination and/or other examinations as determined by the board to those qualified candidates permitted to sit for the examination.*

Section 2. *If an applicant becomes a candidate for certification by examination after the 5th day of the month preceding the month that the next examination is to be held, the credentials of the applicant are in order and correct fee submitted and the board is in receipt of a completed supervisory agreement statement, then a temporary permit [certificate] shall be issued to be in force until sixty (60) days after the examination held six (6) months later, [or] until the results of that examination are received and processed, or until the regularly scheduled renewal date of all licenses to practice, March 31 of each uneven numbered year, whichever comes first. A temporary permit [certificate] requires that the physical therapist's assistant candidate work only with on-site supervision of a physical therapist licensed in Kentucky. The board shall issue a temporary permit [certificate] to:*

(1) *Graduates who have applied for certification by examination, have met all requirements and are sitting for the next examination or who have taken that examination and have not yet been notified of the results.*

(2) *Applicants for certification by endorsement who have met all other requirements but must take the examination again.*

Graduates who have applied for certification by PES examination in another state and who have met all requirements for Kentucky application but who have not yet taken and been notified of successful completion of that examination.

Section 3. *The applicant shall have three (3) attempts to pass the examination except that no applicant may work with a temporary permit longer than twenty-one (21) months. The original fee covers the first attempt. The cost of the examination to the board plus an administrative fee of forty-seven dollars and fifty cents (\$47.50) must be assumed by the applicant for the second and third attempts. If the applicant fails on the*

first and second attempts and requests re-examination and pays the required fee, at the discretion of the board, a temporary *permit* [certificate] shall be issued to allow the applicant to practice. If the applicant fails on the third attempt, the temporary *permit* [certificate] is revoked and the applicant may no longer be employed in Kentucky as a physical therapist's assistant. The applicant who has failed the qualifying examination three (3) times may reapply after one (1) year but must submit a new application fee and no temporary *permit* [certificate] will be issued.

Section 4. Candidates examined by boards of other states or territories shall have registered their PES scores with the Interstate Reporting Service of the Professional Examination Service. The applicant's scores, calculated by the PES to meet Kentucky board requirements, *shall be submitted by the Interstate Reporting Service* to this board for consideration of certification.

Section 5. The candidate for certification by endorsement shall use the regular application form. The Kentucky State Board of Physical Therapy will endorse a candidate who has paid an application fee *proper for the period within the biennial licensure term in which he is applying* [of \$100], been examined by the Professional Examination Service, meets the Kentucky board's requirements of the national raw average score minus 1.5 standard deviation set equal to a converted score of seventy-five (75), and has never had a physical therapist's assistant certificate revoked or suspended or whose certificate is currently not on probation or under disciplinary review in another state. *Beginning December 15, 1984 and thereafter, the fee submitted for application received by the executive secretary of the board in the first year of a biennial licensure term shall be \$140. This application could result in a certificate which would be valid for more than one (1) year. An application fee received by the executive secretary of the board in the second year of a biennial licensure term shall be \$100. This application could result in a license valid for one (1) year or less. Application fees shall be paid by money order, cashier's or certified check payable to the Kentucky State Treasurer.*

Section 6. The candidate for reinstatement may receive a renewal of his/her certificate without further examination upon requesting renewal, payment of the renewal fee of *eighty (80) dollars* [forty dollars (\$40)] *plus* reinstatement fee of *twenty-five (25) dollars* [thirty dollars (\$30)] by money order, cashier's or certified check made payable to the Kentucky State Treasurer, furnish current complete home and all physical therapy business addresses and telephone numbers and mailing these to the executive secretary of the board. *The fee for renewal received which will grant certification for a period of one (1) year or less shall be forty (40) dollars plus a reinstatement fee of twenty-five (25) dollars.* Assistants who have not been certified for three (3) or more years may, in addition, be required to work with on-site supervision for a maximum period of time of up to six (6) months; or possibly, after evaluation of each instance be required to be re-examined.

Section 7. Physical therapist candidates who fail to pass the physical therapists' licensure examination on three (3) attempts and *foreign trained physical therapist candidates who fail to complete general education requirements within the designated eighteen (18) months*

may become special candidates for certification as a physical therapist's assistant by application to the board. The board will only consider those candidates who have achieved at least a converted *sixty-five (65)* [fifty (50)] on each part of their physical therapist examination with a passing set equal to the national average raw score minus 1.5 standard deviation set equal to a converted seventy-five (75) on each part of the physical therapist examination.

Section 8. *Beginning December 15, 1984, certification, which shall be in effect until March 31, 1987 [the next January 31,] and thereafter, March 31 of the next uneven numbered year shall be issued by the board when candidates for certification by endorsement, reinstatement and special means have met all requirements and the board has received notice from the Professional Examination Service that the candidate by examination has received a passing grade of at least the national raw average score minus 1.5 standard deviation set equal to a converted score of seventy-five (75).*

JEAN M. DAVIS, Chairman

APPROVED BY AGENCY: June 29, 1984

FILED WITH LRC: August 13, 1984 at 11:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held September 21, 1984 at 10 a.m. in Room 103 of the Capitol Annex. Those interested in attending this hearing shall contact in writing by September 16, 1984: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly, Executive Secretary

(1) Type and number of entities affected: Physical Therapist's Assistant applicants for certification by examination, 16 per year; by endorsement, 10 per year.

(a) Direct and indirect costs or savings to those affected: Increased cost to examine applicants is basically \$40 each or \$80 to those possibly being issued a two-year license. No ongoing increase.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body: Increased fee for examination candidates is offset by increase in cost of exam to the board and cost of renting exam site.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings: Increase in income offset by increased cost of administering exam.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No change.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: None identified.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: A maximum time in which a candidate for licensure could work with a temporary permit was included so that should an applicant decide to not be examined when scheduled, he would be treated the same as an applicant who fails to pass the exam within the allotted period for three takes. In all instances, fees for application are prorated according to the period within the biennial licensure term in which an applicant applies. This was proposed to not place an undue burden on an applicant who might be caused to renew his certificate shortly after obtaining it. The reinstatement fee was lower to meet statutory requirements.

Tiering:

Was tiering applied? No. Physical therapist's assistant applicants for certification all have equal rights and their regulations are implemented uniformly.

CABINET OF THE GENERAL GOVERNMENT

Board of Physical Therapy (Proposed Amendment)

201 KAR 22:110. Renewal of assistant's certification.

RELATES TO: KRS 327.040

PURSUANT TO: KRS 327.040

NECESSITY AND FUNCTION: This regulation provides specific direction for the *biennial* [annual] renewal of the assistant's certification. The billfold certificate is a means of identifying those persons holding themselves out as a certified physical therapist's assistant. [This mechanism may be beneficial upon the visitation of a board member to the clinical setting.]

Section 1. *Beginning with certificates valid until January 31, 1985 and thereafter beginning March 31, 1987*, the assistant will automatically receive a renewal certificate upon payment on or before *March 31* [January 31] of each *uneven numbered* year of a renewal fee of *eighty (80) dollars* [forty dollars (\$40)] by money order [, certified or cashier's] or check made payable to the Kentucky State Treasurer and current complete home and all *physical therapy* business locations and addresses and telephone numbers and sent to the executive secretary of the board. If payment and complete information are [is] not received by the executive secretary by *March 31* [January 31] of each *uneven numbered* year, the certificate shall lapse.

Section 2. Upon initial certification and each subsequent renewal, all certified physical therapist's assistants will be furnished a validation that must be posted to the original certificate and *displayed* [kept] at the primary *physical therapy* business address.

JEAN M. DAVIS, Chairman

APPROVED BY AGENCY: June 29, 1984

FILED WITH LRC: August 13, 1984 at 11:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held September 21, 1984 at 10 a.m. in Room 103 of the Capitol Annex. Those interested in attending this hearing shall contact in writing by September 16, 1984: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly, Executive Secretary

(1) Type and number of entities affected: Approximately 130 persons a biennium.

(a) Direct and indirect costs or savings to those affected:

1. First year: Renewal fee is doubled but is to be biennial rather than annual. First license will be for 27 months.

2. Continuing costs or savings: No change.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Renewal monies will be doubled and give us the greater part of our biennial income within 1st fiscal year.

2. Continuing costs or savings: Savings to the board will be in decreased postage, manpower needs and expenses of printing renewal cards.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork will be decreased for agency.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: None identified.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. Physical therapist's assistant certification is implemented uniformly in regard to all physical therapist's assistants who have equal rights and responsibilities.

TOURISM CABINET

Department of Fish and Wildlife Resources (Proposed Amendment)

301 KAR 2:044. Taking of migratory wildlife.

RELATES TO: KRS 150.010, 150.015, 150.300, 150.305, 150.320, 150.330, 150.340, 150.360

PURSUANT TO: KRS 13A.350[13.082]

NECESSITY AND FUNCTION: In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply.

Section 1. Seasons: (1) Doves: September 1 through October 31; December 1 [3] through December 9 [11].

(2) Woodcock: October 1 through December 4.

(3) Common snipe: October 1 through December 4.

(4) Experimental September duck: September 12 [7] through September 16 [11].

Section 2. Limits:

Species	Bag Limits	Possession Limits
Doves	12	24
Woodcock	5	10
Common snipe	8	16
Experimental September duck, wood duck, teal and other ducks	*4	*8

*Daily bag limit is four (4) ducks, no more than one (1) of which may be a species other than teal or wood duck, and the possession limit is double the daily bag limit.

Section 3. Bag and Possession Limits: (1) After two (2) or more days of shooting, possession limits apply to transporting, but do not permit a double bag limit in the field.

(2) The above species (except doves) dressed in the field, or being prepared for transportation, must have one (1) fully feathered wing or head attached to the bird for identification purposes. [For further information on the above species, consult Title 50, Code of Federal Regulations, Part 20.]

Section 4. Shooting Hours: (1) Doves: From eleven (11) o'clock a.m. until sunset.

(2) Common snipe and woodcock: from one-half (½) hour before sunrise to sunset.

(3) Experimental September duck: from one-half (½) hour before sunrise to sunset.

Section 5. Free Permit for Experimental September Duck Season. Persons hunting during the experimental September duck season should obtain a free permit from any conservation officer or other authorized agents before hunting. The free permit contains a request for harvest information to be furnished on a self-address, stamped post card.

Section 6. Falconry Hunting. The wildlife species listed in this regulation may be pursued and taken by a licensed falconer with any legal hunting raptor during the regular hunting dates listed for each species. All bag and possession limits apply to falconry hunting.

Section 7. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this regulation apply to the following areas:

(1) Ballard Wildlife Management Area, located in Ballard County:

(a) Doves: September 1 through October 14 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.

(b) Woodcock and snipe: Seasons closed.

(2) West Kentucky Wildlife Management Area, located in McCracken County:

(a) Doves: September 1 through October 16 only.

(b) Woodcock and snipe: Hunting permitted on tracts 2, 3, 6, and 7 only.

(3) Central Kentucky Wildlife Management Area, located in Madison County:

(a) Doves: September 1 through October 16 only.

(b) Woodcock and snipe: Seasons closed.

(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties:

(a) Doves: September 1 through September 30 and December 1 [3] through December 9 [11] only.

(b) Woodcock and snipe: December 1 through December 4 only.

(5) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties:

(a) Doves: September 1 through September 21 [23], September 22 [24] through October 31 [30] as announced by Fort Campbell Hunting and Fishing Unit, and December 1 [3] through December 9 [11] only. Hunting permitted during these periods in designated areas only.

(b) Shooting hours for doves: from twelve (12) o'clock noon until sunset.

(c) Woodcock and snipe: November (22) [24] through November 30 and December 1 through December 2 on selected areas only.

(6) Closed Areas: The hunting of doves, woodcock, common snipe, and ducks is prohibited on the following wildlife management areas: that portion of Grayson Lake Wildlife Management Area [located in Carter and Elliott Counties] east of the Little Sandy River and Bruin Creek portions of Grayson Lake; Beaver Creek Wildlife Management Area, including all private inholdings, located in Pulaski and McCreary Counties; Robinson Forest Wildlife Management Area, located in Breathitt, Perry, and Knott Counties; Redbird Wildlife Management Area, including all private inholdings, located in Leslie and Clay Counties; Dewey Lake Wildlife Management Area, located in Floyd County; Cane Creek Wildlife Management Area, including all private inholdings, located in Laurel County; Mill Creek Wildlife Management Area, located in Jackson County.

CARL KAYS, Commissioner
ROBERT C. WEBB, Chairman
G. WENDALL COMBS, Secretary

APPROVED BY AGENCY: June 8, 1984

FILED WITH LRC: August 1, 1984 at 2:15 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 26, 1984 at 2 p.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, KY. Those interested in attending this hearing shall contact: William D. Graves, Director, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: An estimated 90,000 persons will participate in the migratory bird hunting proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and a federal migratory bird hunting and conservation stamp if hunting waterfowl. Indirect costs would be determined by the hunter, depending on his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license (\$7.50 for residents) unless exempt by regulations. Waterfowl hunters would be required to possess a \$7.50 migratory bird hunting and conservation stamp, also.

2. Continuing costs or savings: Same as first year

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Waterfowl hunters will be asked to report their hunting success by completing and mailing a short form on a franked survey card.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is \$140,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The results of the waterfowl harvest survey will be tabulated and reported to the U.S. Fish and Wildlife Service in accordance with experimental hunting season agreement.

(3) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about \$70 a season on food, lodging, transportation and equipment. This will add about \$6,300,000 to the incomes of local businesses.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest to migratory birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky sportsmen.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No

If no, please explain why tiering was not applied: This type of regulation does not appear to be adaptable to the tiering process since it only applies to migratory bird hunters.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)**

401 KAR 5:026. Classification of waters.

RELATES TO: KRS 224.020, 224.060

PURSUANT TO: KRS [13.082,] 224.033(17)

NECESSITY AND FUNCTION: This regulation applies the use classifications found in Section 4 of 401 KAR 5:031 to the surface waters of the Commonwealth. This regulation also makes all surface waters subject to the general criteria specified in Section 3 of 401 KAR 5:031.

Section 1. Classification to Designated Uses. Waters classified under this regulation shall be designated for all legitimate uses listed in KRS 224.020(1) except as

specified in 401 KAR 5:031, Section 6. Until reclassified in accordance with the procedures of this regulation, the criteria which are indicated for these classifications shall be applicable in all cases unless otherwise ordered by the cabinet [department] pursuant to 401 KAR 5:031, Section 9. Outstanding resource waters may have unique water quality characteristics which shall be maintained even beyond the water's designated classification.

Section 2. Reclassification. (1) The reclassification of waters of the Commonwealth which establishes a different classification than is established under this regulation shall be adopted only upon affirmative findings by the cabinet [department] pursuant to Sections 5 and 6 of this regulation. *Prior to adding or removing any use, the cabinet shall provide notice and an opportunity for a public hearing.*

(2) *In reclassifying any water body, the cabinet shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.*

(3) *A use shall not be removed for a water body if that use is currently being attained, or if such uses will be attained by implementing effluent limitations required under 401 KAR 5:035 and 401 KAR 5:045 and by implementing cost-effective and reasonable best management practices for nonpoint source control.*

(4) If a water body is designated for a more stringent use than is currently being attained, the cabinet [department] shall [may] reclassify the water body [(segment)] upon demonstration that the designated use is unattainable due to natural background; irretrievable person-induced conditions; or that existing "point" sources would have to be controlled beyond the most stringent effluent limitation levels required for such sources under 401 KAR 5:035 and 401 KAR 5:045 and imposition of such extra controls would result in ["substantial"] and widespread [adverse] economic and social impact.

(5) *Reclassifications adopted in accordance with this regulation shall be listed in Section 8 of this regulation.*

(6) Implementation of this section will be consistent with 401 KAR 5:029, Section 2.

Section 3. Priority for Implementation. Except as provided in subsection (4) of this section, the priorities for reclassification of the waters of the Commonwealth are:

(1) Waters receiving (or proposed to receive) discharges from publicly-owned treatment works and/or serving as public water supply sources in the following order of priority:

(a) Any local units of government with a pending public construction permit application for installation or upgrading of a sewage treatment plant and/or public water treatment plant.

(b) Any local units of government in the 201 Construction Grants Program for installation or upgrading of a sewage treatment plant, in an order of priority consistent with their priority project list rank.

(c) Any local units of government which request consideration prior to their entering into either their own construction project, a NPDES or KPDES permit action, or the 201 Construction Grants Program for installation or upgrading of a sewage treatment plant.

(d) Other local units of government.

(2) Waters receiving (or proposed to receive) discharges from any other (private or semi-public) treatment works, in the following order of priority:

(a) New NPDES or KPDES permit applicants or proposed NPDES or KPDES permit modifications to waterways which may potentially be classified for a beneficial use of cold-water aquatic habitat.

(b) All other segments with private or semi-public facilities, on a first-come, first-serve basis.

(3) All other surface waters which do not have any existing or proposed point source dischargers.

(4) These priorities may be varied in a particular case pursuant to an administrative hearing.

Section 4. Responsibility for Providing Documentation. The following entities are responsible for providing the documentation for the reclassification of the surface waters under this regulation. The required documentation is outlined in Section 5.

(1) The *cabinet* [department] shall provide supporting documentation for the reclassification of waters on which are located (or proposed to be located) facilities which are either:

(a) Publicly-owned treatment works;

(b) Outstanding resource waters on publicly owned land; or

(c) New NPDES or KPDES permit applicants or proposed NPDES or KPDES permit modifications for waters which may potentially be classified for a beneficial use of outstanding resource waters.

(2) Any applicant filing for reclassification in circumvention of the priority system contained in Section 3 shall provide classification documentation for waters on which discharges from private or semi-public treatment works are located (or proposed to be located). In these cases the applicant sustains the burden of proof that the reclassification is appropriate and necessary.

(3) The *cabinet* [department] shall provide documentation for all other waters which do not have any existing or proposed point source dischargers.

Section 5. Required Documentation. This section outlines the documentation *which may be required* to support the reclassifications of surface waters of the Commonwealth. [as follows:] *The detail required will be subject to approval by the cabinet on a case-by-case basis.*

(1) A USGS 7.5 minute map will be prepared showing those waters or stream segments to be classified. A description consisting of a river mile index with existing and proposed discharge points.

(2) Existing uses and water quality data for the proposed waters or stream segments for which the reclassification is proposed. Where adequate data are unavailable, additional studies may be required by the *cabinet* [department].

(3) General land uses (e.g., mining, agricultural, recreation, low, medium, and high density residential commercial-industrial, etc.) as well as specific land uses adjacent to the waters for the length of the segment for which the reclassification is proposed.

(4) The existing and designated uses of the receiving waters into which the segment under consideration discharges and the downstream uses of those receiving waters.

(5) General physical characteristics of the stream segment including, but not limited to width, depth, bottom composition, and slope.

(6) The frequency of occasions when there is no natural flow in the segment, the low flow in the segment and low flow in adjacent segments.

(7) The first milepoint at which the low flow exceeds one (1) cfs.

(8) An assessment of the existing and potential aquatic life habitat in the stream segment under consideration and the adjacent upstream segment. The existing aquatic life in the area must be documented as well as an assessment of livestock and natural wildlife dependence upon the stream segment.

(9) The existing and proposed designated uses for the stream segment(s) in question.

(10) In addition, for downgrading, information must be supplied pursuant to Section 2, specifically:

(a) An explanation of the irretrievable person-induced, or natural conditions which preclude attainment of a higher use designation; or

(b) An assessment of the *widespread* [adverse] social and economic impacts of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for such sources.

Section 6. Procedures for Reclassification. This section outlines the procedures by which use classifications will be assigned. Procedures for designating the use classification of a water of the Commonwealth shall be initiated and considered in the order of priority specified in Section 3.

(1) For each of the waters for which a reclassification is proposed, the *cabinet* [department] or applicant as defined in Section 4(2) of this regulation, shall prepare a fact sheet containing, but not limited to, the following information:

(a) The name and address of the applicant;

(b) The name and sketch or description of the waters proposed for specified use classifications, including the location of existing and proposed dischargers;

(c) The proposed use classifications;

(d) A brief abstract of the supportive documentation which demonstrates that said classification is appropriate;

(e) The appropriate water quality criteria for the segment(s) based on the proposed designated use(s);

(f) The treatment requirements proposed for discharges to the waters in question if designated for the proposed use(s);

(g) A "plain English" summary of the implications of such designation for the community and other users or potential users of the waters in question;

(h) The procedure by which the designation will be made.

(2) Based upon all available information, the staff shall make its recommendation of use classifications of the waters in question to the secretary.

(3) The secretary shall cause to be prepared a list of segments and their classification to be published as an administrative regulation.

(4) Upon completing the review period and the procedures for promulgation under administrative rule making, all designated waters and their use classifications shall be attached as an addendum to this regulation.

Section 7. Stream Use Classifications. (1) Listed in the tables below are the use classifications for specific waters of the Commonwealth. The County column indicates the county in which the mouth of the stream is located. The identifying symbols for use classifications are as follows:

WAH—	Warmwater Aquatic Habitat
CAH—	Coldwater Aquatic Habitat
PCR—	Primary Contact Recreation
SCR—	Secondary Contact Recreation
DWS—	Domestic Water Supply (applicable at existing points of public water supply withdrawal)
ORW—	Outstanding Resource Water

(2) Waters not specifically listed in this section are designated for the use of warmwater aquatic habitat, primarily contact recreation, secondary contact recreation and domestic water supply in accordance with Section 1 of this regulation.

Section 8. [7.] The provisions of this regulation shall not be severable with 401 KAR 5:029, 401 KAR 5:031, and 401 KAR 5:035.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: August 4, 1984

FILED WITH LRC: August 15, 1984 at 10 a.m.

PUBLIC HEARING SCHEDULED: Public hearings on this regulation will be held on September 25, 1984 at 2 p.m. and 7 p.m. in the auditorium of the Capital Plaza Tower. Those interested in attending these hearings shall contact in writing at least five days before the hearings the following agency: Robert W. Ware, Manager, Program Development Branch, Division of Water, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

(See Table on following pages.)

LIST OF DESIGNATED STREAM USE CLASSIFICATIONS

BIG SANDY BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification</u>
<u>Hood Creek</u>	<u>Source to Wheeler Branch</u>	<u>Lawrence</u>	<u>CAH, PCR, SCR</u>

LITTLE SANDY RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification</u>
<u>Big Caney Creek</u>	<u>Source to Grayson Lake</u>	<u>Elliott</u>	<u>CAH, PCR, SCR</u>
<u>Laurel Creek</u>	<u>Source to Little Sandy River</u>	<u>Elliott</u>	<u>CAH, PCR, SCR</u>

TYGARTS CREEK BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification</u>
<u>Buffalo Creek</u>	<u>Source to Tygarts Creek</u>	<u>Carter</u>	<u>WAH, PCR, SCR</u>
<u>Little Whiteoak Creek</u>	<u>Source to Tygarts Creek</u>	<u>Greenup</u>	<u>WAH, PCR, SCR</u>
<u>Tygarts Creek</u>	<u>Source to Ohio River</u>	<u>Greenup</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Whiteoak Creek</u>	<u>Source to Tygarts Creek</u>	<u>Greenup</u>	<u>WAH, PCR, SCR</u>

GREEN RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification</u>
<u>Green River</u>	<u>River Mile 148.0 to Ohio River</u>	<u>Henderson</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Lick Fork Creek</u>	<u>Source to W. Fork Drakes Creek</u>	<u>Simpson</u>	<u>CAH, PCR, SCR</u>
<u>Lynn Camp Creek</u>	<u>Source to Green River</u>	<u>Hart</u>	<u>CAH, PCR, SCR</u>
<u>Underground River System</u>	<u>Mammoth Cave National Park</u>	<u>Edmonson/Hart/ Barren</u>	<u>CAH, PCR, SCR, ORW</u>
<u>Mud River</u>	<u>Source to Green River</u>	<u>Butler/Muhlenberg</u>	<u>WAH, PCR, SCR</u>
<u>Roundstone Creek</u>	<u>Source to Hwy 1140 (River Mile 3.5)</u>	<u>Hart</u>	<u>CAH, PCR, SCR</u>
<u>Trammel Fork</u>	<u>Source to Hwy 31E (River Mile 23.6)</u>	<u>Warren</u>	<u>CAH, PCR, SCR</u>
<u>Wiggington Creek</u>	<u>Source to Gasper River</u>	<u>Logan</u>	<u>WAH, PCR, SCR</u>

LOWER CUMBERLAND RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification</u>
<u>Casey Creek</u>	<u>Source to Little River</u>	<u>Trigg</u>	<u>CAH, PCR, SCR</u>
<u>Skinframe Creek</u>	<u>Source to Livingston Creek</u>	<u>Lyon</u>	<u>CAH, PCR, SCR</u>
<u>Sulphur Spring Creek</u>	<u>Source to Red River</u>	<u>Simpson</u>	<u>CAH, PCR, SCR</u>

TENNESSEE RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification</u>
<u>Tennessee River</u>	<u>River Mile 22.4 to River Mile 11.0</u>	<u>Livingston/Marshall</u>	<u>WAH, PCR, SCR, ORW</u>

TRADEWATER RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification</u>
<u>Craborchard Creek/ Vaughn Ditch</u>	<u>Source to Tradewater River</u>	<u>Webster</u>	<u>WAH, PCR, SCR</u>
<u>Montgomery Creek</u>	<u>Source to Tradewater River</u>	<u>Caldwell</u>	<u>WAH, PCR, SCR</u>
<u>Tradewater River</u>	<u>Source to Ohio River</u>	<u>Crittenden</u>	<u>WAH, PCR, SCR</u>

OHIO RIVER BASIN (Main Stem and Minor Tributaries)

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification</u>
<u>Ohio River</u>	<u>Big Sandy River (River Mile 664.15) to Mississippi River</u>	<u>Ballard</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Doe Run Creek</u>	<u>Source to KY Hwy 1628 (River Mile 5.15)</u>	<u>Meade</u>	<u>CAH, PCR, SCR</u>
<u>Sinking Creek</u>	<u>Source to Hwy 259 (River Mile 4.0)</u>	<u>Breckinridge</u>	<u>CAH, PCR, SCR</u>

ADMINISTRATIVE REGISTER

LICKING RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification</u>
<u>Craney Creek</u>	<u>Source to North Fork Licking River</u>	<u>Rowan/Morgan</u>	<u>CAH, PCR, SCR</u>
<u>Fleming Creek</u>	<u>Source to Licking River</u>	<u>Nicholas</u>	<u>WAH, PCR, SCR</u>
<u>Slate Creek</u>	<u>Source to Licking River</u>	<u>Bath</u>	<u>WAH, PCR, SCR</u>

KENTUCKY RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification</u>
<u>Chimney Top Creek</u>	<u>Basin</u>	<u>Wolfe</u>	<u>CAH, PCR, SCR</u>
<u>East Fork Indian Creek</u>	<u>Source to Indian Creek</u>	<u>Menifee</u>	<u>CAH, PCR, SCR</u>
<u>Gladie Creek</u>	<u>Basin</u>	<u>Menifee</u>	<u>CAH, PCR, SCR</u>
<u>Middle Fork Red River</u>	<u>Source to access road 0.3 Miles above Rock Quarry</u>	<u>Powell</u>	<u>CAH, PCR, SCR</u>
<u>Red River</u>	<u>River Mile 68.6 to River Mile 59.5</u>	<u>Menifee/Wolfe</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Silver Creek</u>	<u>Source to Kentucky River</u>	<u>Madison</u>	<u>WAH, PCR, SCR</u>
<u>South Fork Elkhorn Creek</u>	<u>Source to North Fork Elkhorn Creek</u>	<u>Franklin</u>	<u>WAH, PCR, SCR</u>
<u>Swift Camp Creek</u>	<u>Source to Red River</u>	<u>Wolfe</u>	<u>CAH, PCR, SCR</u>
<u>Town Branch</u>	<u>Source to South Fork Elkhorn Creek</u>	<u>Fayette</u>	<u>WAH, PCR, SCR</u>

SALT RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification</u>
<u>Chenoweth Run</u>	<u>Source to Floyds Fork</u>	<u>Jefferson</u>	<u>WAH, PCR, SCR</u>
<u>Currys Fork</u>	<u>Confluence of South and North Forks to Floyds Fork</u>	<u>Oldham</u>	<u>WAH, PCR, SCR</u>
<u>Floyds Fork</u>	<u>Source to Salt River</u>	<u>Bullitt</u>	<u>WAH, PCR, SCR</u>
<u>Mill Creek</u>	<u>Source to Salt River</u>	<u>Bullitt</u>	<u>WAH, PCR, SCR</u>
<u>North Fork of Currys Fork</u>	<u>Source to South Fork of Currys Fork</u>	<u>Oldham</u>	<u>WAH, PCR, SCR</u>
<u>Unnamed tributary to Mill Creek</u>	<u>Source to Mill Creek</u>	<u>Bullitt</u>	<u>WAH, PCR, SCR</u>

GREEN RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification</u>
<u>Beaver Dam Creek</u>	<u>Source to Green River</u>	<u>Edmonson</u>	<u>CAH, PCR, SCR</u>
<u>Black Lick Creek</u>	<u>Source to Clear Fork</u>	<u>Logan</u>	<u>WAH, PCR, SCR</u>
<u>Buffalo Creek</u>	<u>Source to Green River (in Mammoth Cave National Park)</u>	<u>Edmonson</u>	<u>CAH, PCR, SCR</u>
<u>Cypress Creek</u>	<u>Source to Pond River</u>	<u>McLean</u>	<u>WAH, PCR, SCR</u>
<u>Gasper River</u>	<u>Source to Barren River</u>	<u>Warren</u>	<u>WAH, PCR, SCR</u>
<u>Green River</u>	<u>River Mile 225.9 to River Mile 181.7</u>	<u>Edmonson/Hart</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Green River</u>	<u>River Mile 181.7 to River Mile 168.0</u>	<u>Edmonson/Warren</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Green River</u>	<u>River Mile 168.0 to River Mile 148.0</u>	<u>Butler/Warren</u>	<u>WAH, PCR, SCR, ORW</u>

UPPER CUMBERLAND RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification</u>
<u>Bad Branch</u>	<u>Basin</u>	<u>Letcher</u>	<u>CAH, PCR, SCR</u>
<u>Bark Camp Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>CAH, PCR, SCR</u>
<u>Beaver Creek</u>	<u>Basin</u>	<u>McCreary</u>	<u>CAH, PCR, SCR</u>
<u>Beaver Creek</u>	<u>Source to Lake Cumberland</u>	<u>Wayne</u>	<u>WAH, PCR, SCR</u>
<u>South Fork Cumberland River</u>	<u>River Mile 55.2 to River Mile 45.0</u>	<u>McCreary/Wayne</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Breeden's Creek</u>	<u>Basin</u>	<u>Harlan</u>	<u>CAH, PCR, SCR</u>
<u>Buck Creek</u>	<u>River Mile 47.7 to River Mile 10.5</u>	<u>Pulaski</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Bunches Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>CAH, PCR, SCR</u>
<u>Cane Creek</u>	<u>Basin</u>	<u>Laurel</u>	<u>CAH, PCR, SCR</u>
<u>Cogur Fork</u>	<u>Basin</u>	<u>McCreary</u>	<u>CAH, PCR, SCR</u>
<u>Cumberland River</u>	<u>Cumberland Lake Dam to Highway 90 Bridge (River Mile 426.5)</u>	<u>Russell/Cumberland</u>	<u>CAH, PCR, SCR</u>
<u>Cumberland River</u>	<u>River Mile 574.6 to River Mile 558.5</u>	<u>McCreary/Whitley</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Difficulty Creek</u>	<u>Basin</u>	<u>McCreary</u>	<u>CAH, PCR, SCR</u>
<u>Dogslaughter Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>CAH, PCR, SCR</u>
<u>Fugitt Creek</u>	<u>Basin</u>	<u>Harlan</u>	<u>CAH, PCR, SCR</u>
<u>Horse Lick Creek</u>	<u>River Mile 12.3 to River Mile 0.0</u>	<u>Jackson</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Kelly Branch</u>	<u>Basin</u>	<u>Harlan</u>	<u>CAH, PCR, SCR</u>
<u>Kennedy Creek</u>	<u>River Mile 1.0 to River Mile 0.0</u>	<u>Wayne</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Little South Fork Cumberland River</u>	<u>River Mile 35.6 to River Mile 4.1</u>	<u>Wayne</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Looney Creek</u>	<u>Basin</u>	<u>Harlan</u>	<u>CAH, PCR, SCR</u>
<u>Martin's Fork</u>	<u>Basin above Hwy 987 (River Mile 27.4)</u>	<u>Harlan</u>	<u>CAH, PCR, SCR, ORW</u>
<u>Middle Fork, Rockcastle River</u>	<u>River Mile 61.1 to River Mile 41.3</u>	<u>Jackson</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Poor Fork Cumberland River</u>	<u>Basin above Jefferson National Forest Boundary (River Mile 720.55)</u>	<u>Letcher</u>	<u>CAH, PCR, SCR</u>

<u>Poor Fork Cumberland River</u>	<u>River Mile 720.55 to Clover Fork Cumberland River</u>	<u>Harlan</u>	<u>WAH, PCR, SCR, DW</u>
<u>Razor Fork</u>	<u>Basin</u>	<u>Harlan</u>	<u>CAH, PCR, SCR</u>
<u>Rock Creek</u>	<u>Tennessee-Kentucky State Line to White Oak Creek</u>	<u>McCreary</u>	<u>CAH, PCR, SCR, ORW</u>
<u>Rockcastle River</u>	<u>River Mile 27.9 to River Mile 8.5</u>	<u>Laurel/Pulaski</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Roundstone Creek</u>	<u>Source to Rockcastle River</u>	<u>Rockcastle</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Yellow Creek</u>	<u>Source to Cumberland River</u>	<u>Bell</u>	<u>WAH, PCR, SCR</u>
<u>Shillalah Creek</u>	<u>Source to Cumberland Gap National Historical Park boundary</u>	<u>Bell</u>	<u>CAH, PCR, SCR</u>
<u>Troublesome Creek</u>	<u>Basin</u>	<u>McCreary</u>	<u>CAH, PCR, SCR</u>
<u>Sugar Run</u>	<u>Source to Cumberland Gap National Historical Park boundary</u>	<u>Bell</u>	<u>CAH, PCR, SCR</u>

REGULATORY IMPACT ANALYSIS

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(1) Type and number of entities affected: Generally, the entities affected by this regulation irrespective of the use classification include: (1) wastewater treatment plants that discharge (or plan to discharge) to any of the segments; (2) fishing and recreation enthusiasts; (3) riparian landowners; and (4) the general public in and adjacent to the drainage basins. Basin population projections for 1980 as contained in the River Basin Management Plan for Kentucky show 434,541 persons inhabiting the Green River Basin; 607,165 persons in the Kentucky River Basin; 309,478 in the Licking River Basin; 964,704 in the Ohio River Basin (including the tradewater and the Little Sandy drainages); 103,222 in the Lower Cumberland Basin; 260,273 in the Upper Cumberland Basin; 186,466 persons in the Big Sandy River Basin; 55,861 in the Mississippi River Basin; 111,208 in the Tennessee River Basin; and 844, 108 persons in the Salt River Basin. Some portion of the above population will benefit from maintaining viable sport fishery resources (coldwater and warmwater), water-based recreation, community water supplies, and the unique and outstanding characteristics of Kentucky's Outstanding Resource Water segments. On the negative side, use classifications and criteria changes (where applicable) could create additional expenses from improvements in treatment capacity and capability. Some amount of revenue may be required to offset the expenses of local government should facility improvements be warranted in the future. General taxes, special assessments, or user rates might increase in order to subsidize necessary wastewater treatment and disposal services. A more complete explanation of entities affected by various use classifications follows.

Coldwater Aquatic Habitat Segments: Segments being considered for coldwater aquatic habitat use classifications are listed in Appendix A. A total of 9 entities discharge to coldwater segments listed in Appendix B—six (6) discharges in the Kentucky River Basin; one (1) discharge in the Green River Basin; and two (2) discharges to minor tributaries in the Ohio River Basin. All other coldwater segments not listed in Appendix B receive no discharges from wastewater treatment facilities.

Discharges to coldwater segments include package treatment plants owned and operated by quasi-public or nonprofit entities (i.e., Breckinridge County Housing Authority). Sanitary waste systems of state, federal or local government-owned or operated facilities also discharge to various coldwater segments (i.e., Kentucky Department of Parks—Natural Bridge State Park, Irvington School and the U.S. Department of Agriculture Frenchburg CCC). Additionally, three commercial entities discharge to coldwater fishing segments including the Green River Sand and Gravel Company, Hinkle Contracting Co., and the Dressie Scotts Childrens Home. One other entity discharging to Swift Camp Creek could not be determined.

Additionally, some portion of the general population in the subject river basins will benefit from maintaining viable sport fishery resources. Although the exact number of anglers using each of the segments is not available, most have been reported by the Kentucky Department of Fish and Wildlife Resources (KDFWR) as being heavily used by area fishing enthusiasts. In some locations, 10 to 50 anglers were present during site visits by KDFWR personnel in 1981 and 1982. KDFWR contends that Kentucky's coldwater fisheries provide trout fishing opportunities to approximately 33,000 anglers annually. In 1980, the U.S. Fish and Wildlife Service reported that a total of 41,800 in-state residents (16 years or older) and 17,900 out-of-state residents fished for trout in Kentucky's coldwater streams. A detailed accounting by segment requires an in-depth analysis of users at each segment.

In summary, KDFWR contends that "these streams are valuable and very successful trout fisheries and should be recognized as such. A rough estimate is that the put-and-take trout streams comprise something less than 1.0% of the flowing stream miles in the Commonwealth." KDFWR further contends that the current use classifications do not place "undue constraints on other potential users of the stream resources of Kentucky."

Outstanding Resource Water Segments: Segments qualifying for automatic inclusion as Outstanding Resource Waters include Kentucky's eight designated Wild Rivers and segments harboring federally designated threatened and endangered aquatic species. These segments are listed in Appendix C. Outstanding Resource Water segments receiving wastewater

discharges are listed in Appendix D. A total of 35 entities discharge to Outstanding Resource Water segments—23 discharges in the Upper Cumberland River Basin and 12 discharges in the Tennessee River Basin. Outstanding Resource Water segments not listed in Appendix D receive no discharges from wastewater treatment facilities.

Discharges to Outstanding Resource Water segments include the municipal discharge of the city of McKee and the Jackson County Water Association treatment plant in Jackson County as well as package treatment plants serving Shopville, Eagle, McKee, Tyner, Eubank, Waynesburg, Kings Mountain, Highland and Ledbetter Elementary Schools. Sanitary waste systems of state or federally owned and operated facilities also discharge to various outstanding resource water segments including the Kentucky Department of Parks' Cumberland Falls and Kentucky Dam Village State Parks, the Kentucky Department of Transportation's Rt. 90 Roadside Park, and the Tennessee Valley Authority's Kentucky Dam hydroelectric facility. Additionally, nineteen (19) commercial interests that discharge to several outstanding resource water segments could be affected by this regulation. These include seven (7) manufacturers, one (1) stone quarry, one (1) trucking company, one (1) motel, two (2) gas stations, one (1) camp and six (6) agricultural interests. Among the commercial interests affected by this regulation are the B. F. Goodrich Corporation, Penwalt Corporation, GAF Corporation, SKW Alloys, Airco Carbide, Air Products and Chemicals, and LWD, Inc., all of which discharge to the Tennessee River in Livingston or Marshall Counties.

Priority Segments Associated with Municipal Wastewater Treatment Construction Grants: Priority segments associated with Kentucky's Construction Grants Program (Section 205g of the Federal Water Pollution Control Act, PL 92-500 as amended) are listed in Appendix E along with the applicable use classifications. Virtually all of these segments receive wastewater discharges. A detailed listing of discharges appears in Appendix F. Finally, Appendix G provides a categorical breakdown of the type and number of entities affected by the regulatory use classification of Kentucky's priority segments.

A total of 457 entities discharge to Kentucky's priority segments associated with the municipal wastewater treatment construction grants program—the federal program administered by Kentucky to provide subsidies to local governments for the construction of treatment facilities. These 457 entities are composed of 21 facilities owned and operated by Kentucky or the federal government; 109 facilities owned and operated by Kentucky municipalities or counties; eleven (11) quasi-public institutions such as rural electric cooperatives and housing authorities; 75 retail or wholesale establishments; 42 manufacturers; 24 agricultural interests; 70 coal, sand, gravel, or oil operations; and 105 residential properties (mobile home parks, subdivisions, apartments, private residences). Of this total, 145 entities discharge to Floyds Fork and Mill Creek in the Salt River Basin in close proximity to the highly urbanized Louisville-Jefferson County area; 93 discharge to the Ohio River and the three tributary streams; 59 discharge to the four streams of the Upper Cumberland River Basin; 33 discharge to South Elkhorn and Silver Creeks in the Kentucky River basin; 19 discharge to Fleming and Slate Creeks in the Licking Basin; and 68 discharge to the

mainstream of the Green River and the three other priority stream segments in the basin.

In addition to the above entities, approximately 1,041,640 Kentucky citizens will be impacted in a positive sense by the regulatory use classification of segments supporting community drinking water supplies. Numerical criteria (i.e., water quality standards) for assuring the bacteriological safety and chemical quality of drinking water sources will be applied at the point of withdrawal. Communities benefiting from the maintenance of water supply sources include the following: Ashland (Boyd Co.), Maysville (Mason Co.), Newport-Fort Thomas (Campbell Co.), Fort Mitchell (Kenton Co.), Louisville (Jefferson Co.), Henderson (Henderson Co.), Sturgis-Uniontown-Morgantown (Union Co.), Paducah (McCracken Co.), Mt. Vernon (Rockcastle Co.), Calhoun (McLean Co.), Morgantown (Butler Co.), Central City (Muhlenburg Co.), Brownsville (Edmonson Co.), Rockport (Ohio Co.), Rochester (Butler Co.), Livermore (McLean Co.), Hartford (Ohio Co.), and Owensboro (Davies Co.). Suppliers who purchase water from the above public or semi-public water supplies and their customers will also benefit indirectly from the drinking water use classifications.

Finally, riparian landowners and fishing, hunting, swimming and boating enthusiasts will benefit from stream use classifications protective of water-based recreation and aquatic life.

(a) Direct and indirect costs or savings to those affected:

1. First year: No additional costs in the short-run should result above those (1) **already** being incurred by wastewater treatment facilities currently meeting their effluent limits; or (2) **projected** as necessary for the upgrade of wastewater treatment facilities not meeting their effluent limits. As these regulatory use classifications do **not** represent a change from current management assumptions regarding attainable water quality, treatment requirements, and facility compliance, no **new** costs should result above that already required of and anticipated by various entities affected by this regulation. This is not to say that the attainment of water quality commensurate with supporting beneficial uses in Kentucky does not have cost impacts. Very significant expenditures of public and private funds are spent annually for capital improvements and facility operations. The distinction being made here is that these costs are **not** new costs resulting from this regulation and the entities affected are aware of these continuing, long-standing facility compliance requirements.

In the context of the coldwater aquatic life and Outstanding Resource Water segments, the Cabinet intends to recognize the unique characteristics of these streams such as coldwater fishery resources, federally designated threatened and endangered species, designated Kentucky Wild Rivers, and their exceptional aesthetic, recreational, and ecological value. While recognizing these characteristics, the Cabinet believes that these uses can be maintained provided facility compliance with existing treatment requirements. Facilities discharging to coldwater segments will continue to treat wastewater at existing levels because of seasonal fluctuations in stream flow and temperature. The Cabinet also intends to take a strong antidegradation posture in regard to the Outstanding Resource Water segments, preventing any further degradation of existing water

quality. However, no changes in treatment requirements are proposed at this time.

Finally, as with the above coldwater and outstanding resource water segments, no changes in applicable use classifications for segments associated with the municipal wastewater treatment facility construction grants program are proposed. Given the attainment of effluent limitations protective of warmwater aquatic life, primary and secondary contact recreation, and domestic drinking water at points of withdrawal, the prescribed uses in these segments can be maintained. This regulation by itself does not create new costs, although many facilities (entities) are already required to improve their systems and are therefore anticipating cost increases.

Savings to entities affected primarily relate to maintaining viable sport fishery resources, community water supplies, water-based recreation, and protecting rare and endangered species of fish, wildlife, and plants. The maintenance of community water supplies has already been mentioned in Section 1. Approximately, 1,110,491 Kentucky citizens will benefit from maintaining water supplies vital for domestic use. Maintenance of those water supplies is also vital for agriculture and industrial use, and for sustained economic growth and development of some 26 Kentucky communities.

In regard to the outstanding resource water, coldwater and warmwater aquatic life, and primary and secondary contact recreation use classifications, savings to entities relate primarily to preserving rare and endangered species and maintaining recreational potential and fishery resources. Aesthetics, recreational potential, and intrinsic value of preserving Kentucky's aquatic environment for present and future generations are appropriate and important parameters to investigate. Unfortunately, the degree and quality of a user's experience and the value society places on preserving our natural heritage are intangible qualities which are difficult to measure.

As background information relating to the outstanding resource water, aquatic life and recreation use classifications, the Kentucky Statewide Comprehensive Outdoor Recreation Plan (SCORP 1978) projects statewide increases in demand through 1995 for virtually all recreation activities related directly or indirectly to Kentucky's water resources. These activities include a 15% increase in the demand for hiking; 16% increase for camping; 19.4% increase for hunting (including waterfowl); 17.8% increase for fishing; 3.9% increase for boating; 14.7% increase for water skiing; 15.0% increase for sailing; and a 13.2% increase in demand for canoeing. In 1978 the SCORP reported on a statewide basis that 79% and 3% of the demand for small game and waterfowl hunting respectively, and 34% of the demand for canoeing was unmet. The supply of other recreation activities on a statewide basis exceeded the 1978 demand.

Regionally, the supply of versus the demand for recreational resources is mixed. The SCORP needs survey projected deficits in hiking trails and camping sites in 8 out of 15 Area Development Districts (ADDs). For hunting and particularly the small game component, all ADDs except the Gateway ADD were projected to have shortages through 1995. Deficits were also projected for fishing in seven ADDs including the Kentuckiana, Gateway, FIVCO, Big Sandy, Kentucky River, Cumberland Valley and the Bluegrass ADDs. For

fishing, deficits were projected for all ADDs except the Barren River, Buffalo Trace, Kentucky River, Cumberland Valley, and Lake Cumberland Area Development Districts.

Finally, for the urban counties of Boyd, Campbell, Kenton, Boone, Fayette, Jefferson, Daviess, Henderson, McCracken, Christian, and Warren, the SCORP projects deficits in all of the above recreation activities. In 1978, virtually all of the demand for canoeing in Kentucky's urban counties was unmet versus the 34% statewide demand that was unmet in the same year. Sixty-eight (68) percent of the demand for hiking; 8.8% of the demand for camping; 95.6 and 86.9% for small game and water fowl hunting, respectively; and 29.6% of the demand for fishing were also unmet as of 1978 in Kentucky's urbanizing counties.

The above information merely indicates the very serious shortages in fishing and water-based recreational resources the Commonwealth currently faces. The water quality program of Kentucky among other things, is integral to maintaining and expanding those resources. Basically, the program establishes minimum water quality standards that must be maintained to protect aquatic life and the health and safety of recreational users. In this manner, viable sport fishery resources and other forms of water-based recreation can be maintained to support Kentucky's growing fishing and tourism industry.

To further illustrate the importance of Kentucky's fishery resources, a significant amount of revenue is received by the state, local units of government, and the private sector in the form of privilege fees, licenses, tags, and permits; and expenses associated with bait and tackle, food and lodging, and transportation of in and out-of-state residents. In 1980 dollars, the U.S. Fish and Wildlife Service reported that \$62.8 million were spent for food and lodging, representing the largest per sportsmen expenditure of approximately \$81.03. Other expenses for all 1980 fishing in the Commonwealth included \$54.9 million in transportation expenses; \$6.7 million in privilege fees; \$5.6 million in licenses, tags, and permits; and \$28.3 million in fishing equipment. Overall, Kentucky ranks 25th among the 50 states and the District of Columbia in the amount of expenditures associated with fishing.

Based on the average per-sportsman expenditures for the above cost categories, gross expenditures associated with only the subject coldwater (trout) streams can be estimated. The 53,700 sportsmen who fished for trout in 1980, cumulatively represented 512,500 days of participation or roughly 9½ days per year per angler according to the U.S. Fish and Wildlife Service. Given 53,700 anglers, approximately \$4.3 million was spent by trout fishermen for food and lodging at \$81.03 per fisherman; \$3.8 million for transportation expenses at \$70.80 per angler; \$466,000 for privilege fees at \$8.68 per angler; \$1.9 million for bait and tackle at \$36.53 per angler; and \$389,862 for licenses, tags and permits at \$7.26 per angler. Total expenditures associated with trout fishing approximated \$10.9 million in 1980.

A word of caution is warranted here. The above estimation of expenditures for all fishing were based on a survey of Kentucky sportsmen. As surveys by their very nature attempt to categorize a given population by a representative sample, there are inherent limitations that can lead to prediction error or uncertainty. Extrapolation of the U.S. Fish and Wildlife Service's

results for all fishermen to those who sought only trout must be reviewed cautiously. Nevertheless, it does help to illustrate the possible magnitude of revenues associated with Kentucky's trout streams. Actual figures are probably somewhat less than reported above.

In terms of Kentucky's eight Wild Rivers, the value individuals place on leisure and recreation activities also manifests itself in time, and tangible expenses for transportation, lodging and subsistence, equipment, and other fees. Tangible expenses associated with Kentucky's Wild Rivers are unknown at the present. In the absence of this more concrete measure of value, however, an examination of the time spent on the activity and probable opportunity costs can give some indica-

tion of value. Opportunity costs relate to the opportunities individuals are willing to forego for a day of river recreation such as lost wages and salaries.

If past user rates are indicative, there exists a rather significant demand for primitive recreation experiences like canoeing, fishing, hunting, hiking, and camping along Kentucky's relatively undisturbed Wild River corridors. Table 1 summarizes for five of the eight rivers present demand versus estimated carrying capacity for various recreation activities. These estimates are not directly comparable since (1) different periods of record were used for each segment, (2) user rates sometimes included stream mileage above or below Wild Rivers, and (3) management assumptions differed for various river courses.

Table 1: Estimated User Rates and Carrying Capacity for Select Kentucky Wild Rivers (Visitor-Days)

	Canoeing		Fishing		Hunting		Hiking		Camping	
	User Rates	Carrying Capacity	User Rates	Carrying Capacity	User Rates	Carrying Capacity	User Rates	Carrying Capacity	User Rates	Carrying Capacity
Little South Fork	NR	6,636	NR	11,115	NR	357	NR	20,657	NR	NR
Cumberland River ^{1./}	16,500	21,565	16,400	30,602	20,100	865	10,500	140,286	11,600	69,350
Rockcastle River ^{2./}	960-1,415	16,512	3,300-10,934	992	1,200-6,624	1,336	606	9,460-47,300	4,400	8,600
Red River ^{3./}	3,280	5,040	2,440	10,700	3,620	375	19,540	29,200	59,500	7,300
Rock Creek ^{4./}	NR	NR	8,100	14,108	7,800	1,708	4,600	42,924	9,900	6,800
TOTALS	20,740-21,195		30,240-37,874		32,720-38,144		35,246		85,400	

Footnotes:

NR Not reported

1./ User rates based on 1977 visitor-days (includes public land only)

2./ Range estimates derived from two sources (1974 and 1978) - user rates include mileage not in Wild River

3./ User rates include all Wolfe County area of Daniel Boone National Forest in and adjacent to segment

4./ User rates based on 1975 visitor-days

Source: Kentucky Wild River Management Plans, Miller/Wihey/Lee Inc. (1980)

In general, the data indicates that user rates for canoeing and fishing are within the carrying capacity provided by the resource. With the exception of the Rockcastle River, canoeing and fishing can be expanded without degrading the resource or a user's experience. For hunting and hiking, user rates exceed available capacity in all of the segments with reported data. Finally, for camping, user pressure versus carrying capacity is mixed. In the scenic Red River Gorge, existing camping far outnumbers the available resource for this activity. Conversely, user rates for camping in the Cumberland and Rockcastle River corridors is within carrying capacity and could be expanded.

All totaled, past data indicates that from 20,740 to 21,195 visitor-days were recorded for canoeing; 30,240 to 37,874 visitor-days for fishing; 32,720 to 38,144 visitor-days for hunting; 35,246 visitor-days for hiking; and 85,400 visitor-days for camping along only four of Kentucky's eight Wild Rivers. Estimates for the other Wild Rivers are unavailable, however, these rivers are also regularly travelled and add to the above estimates. This is especially true of the Green Wild River which is

situated wholly within the boundary of the Mammoth Cave National Park.

Although this analysis is not attempting to measure precisely opportunity costs, it is safe to assume that significant opportunity costs are represented by the above user rate figures. Even at the current minimum wage rate, opportunity costs for the above visitation rates easily runs into the millions of dollars and perhaps tens of millions of dollars if all eight rivers are included. This of course is a simplification of reality as obviously not all individuals are minimum wage earners. Additionally as mentioned earlier, opportunity costs are only one measure of value. Distance travelled to the site, lodging and subsistence at the site, privilege fees for the use of the resource, and other expenses must be included for a more accurate description of their worth and value. This information is unfortunately not available.

Regarding the rare and endangered species segments, no attempt is made here to estimate their worth or value to the Commonwealth or the nation. Suffice it to say that it is a national goal to protect species of fish, wildlife, and plants that are threatened with extinction,

based on the Congressional finding "that these species are of aesthetic, ecological, educational, historical, recreational, and scientific value to the nation and its people" (Endangered Species Act of 1973, PL 92-740 as amended). The Commonwealth of Kentucky is mandated by the federal government to protect species of fish, wildlife, and plants that are given this special distinction under PL 92-740.

2. Continuing costs or savings: Continuing costs or savings over the long term cannot be readily enumerated without a detailed analysis of regional economic development and population trends. Many of the segments being classified herein cannot assimilate the wastes associated with growth and development without a corresponding increase in the size and sophistication of wastewater operations and processes. Over time, more expensive treatment will undoubtedly be required and particularly for new dischargers in the basin.

Treatment requirements will increase for new source applicants and expansions of existing facilities, mandating advanced secondary treatment (where applicable) which employs more sophisticated unit processes for the reduction of carbonaceous and nitrogenous oxygen demanding materials and suspended solids. Advanced secondary treatment can ordinarily be achieved or exceeded by conventional activated sludge, fixed film lagoons, or land application processes, supplemented by some form of filtration, absorption, or chemical treatment. The exact treatment needs and costs of individual dischargers is case-specific depending on technology employed, waste characteristics and size. Therefore, aggregate costs cannot be determined.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)2 above.

(b) Reporting and paperwork requirements: This regulation does not contain any reporting or paperwork requirements. The regulation merely specifies legitimate stream uses for the subject segments as well as minimum criteria for protecting these uses. Use designations and numerical and narrative criteria (standards) provide the scientific and legal basis for the Commonwealth's water pollution control program. Standards are used in the (1) determination and assignment of effluent limits by permit to individual dischargers, (2) evaluation of their performance through testing and monitoring, and (3) litigation to achieve compliance. The regulation does not by itself impose paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Changes as specified in this regulation will have no effect on the operation or costs of the Natural Resources and Environmental Protection Cabinet. The Cabinet has already implemented the requirements of this regulation and has internalized associated costs within normal budget appropriations. This regulation as it relates to the operation of the Cabinet does not change the basis for or the routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement.

2. Continuing costs or savings: Same as (2)(a)1 above.

3. Additional factors increasing or decreasing costs: None determined.

(b) Reporting and paperwork requirements: The regulation will not affect the amount of paperwork of the Natural Resources and Environmental Protection

Cabinet. Again, the regulation particularizes the legitimate uses of the subject waters, providing the basis for permitting, compliance monitoring, and enforcement commensurate with numerical and/or narrative criteria (standards) necessary for maintaining stream uses.

(3) Assessment of anticipated effect on state and local revenues: Regulatory changes could over the long-run increase the costs of state and local government for wastewater treatment in the subject basins. In the short-term, no impact on revenues will result since the designation does not change the wastewater treatment requirements for existing facilities necessary for maintenance of the designated uses.

(4) Assessment of alternative methods; reasons why alternatives were rejected: **Coldwater Segments.** Within the context of the coldwater use classifications, no alternatives to their use classification were evaluated. The Commonwealth through the Kentucky Department of Fish and Wildlife Resources is committed to maintaining the viability of Kentucky's coldwater fishery resource. According to Statewide Comprehensive Outdoor Recreation Plan (1978), "one of the more important elements of Kentucky's fish management has been the stocking of state waters with native and adaptable non-native species. This serves the dual purpose of meeting the recreation demand for fishing while preventing the extinction of certain native game fish." As Kentucky's stocking program represents a significant expenditure of public funds and consequently generates considerable revenue for the state, local units of government, and the private sector, it is incumbent on the cabinet to safeguard this investment by maintaining water quality suitable for coldwater aquatic species.

Outstanding Resource Waters. The Kentucky Nature Preserves Commissions (KNPC) in their Outstanding Resource Water (ORW) recommendation to the Cabinet suggested a number of numerical and narrative criteria for protecting the "outstanding values" of the subject Outstanding Resource Water segments. Those recommendations included specific parametric limits for suspended solids, dissolved oxygen, pH, chloride, chlorine, ammonia, chromium, iron, copper, potassium and arsenic. The Division is working with the University of Kentucky to develop criteria for some of the parameters listed so it was considered premature to adopt KNPC's recommended limits. These issues are more appropriately addressed in conjunction with the triennial review of Kentucky's water quality standards regulations to be conducted in 1984.

The KNPC also proposed narrative criteria for various ORW segments including (a) prohibiting stream alterations and establishing a 20 meter (m) buffer strip on both banks; (b) prohibiting habitat alteration for the visual horizon or a minimum of 20 m; (c) stabilizing all denuded or developed shoreline areas; and (d) restrictions on withdrawal, diversion, or storage of water for agriculture, domestic, industrial, or any other public or private use. The Cabinet does not intend to associate any of the above narrative criteria with the stream use designations of the subject outstanding resource waters at least from a mandatory standpoint. This criteria would be largely unworkable within the Cabinet's legal mandate and the costs to entities affected could be significant. Item C above is supported by the Cabinet, however, it has been the policy of the Cabinet to stimulate greater soil erosion and sediment control by

means of a voluntary program. Since this regulation carries the full force and effect of law, we are not in a position to mandate sediment and erosion control without being in conflict with existing policy statements. Last, suggested restrictions on withdrawal are in direct conflict with Kentucky's Riparian Rights Law (KRS Chapter 151). The Cabinet cannot enforce this suggested provision without changes in statutory authority.

Priority Segments Associated with Municipal Wastewater Treatment Construction Grants: Each of the segments with the exception of the mainstem Green and Ohio Rivers received an extensive use attainability survey prior to this designation. The purpose of the use attainability analysis was to characterize current water quality and to ascertain whether or not uses are currently being maintained, or given the application of waste treatment controls, could be attained in the future. According to regulation 401 KAR 5:026, Classification of waters, the department (cabinet) may classify a water body for lower uses, if and only if, "the designated use is unattainable due to natural background; irretrievable person-induced conditions; or that existing point sources would have to be controlled beyond the most stringent effluent limitation levels required for such

sources . . . and imposition of such extra control would result in substantial adverse economic and social impact." It is the opinion of the Cabinet that the prescribed uses for these segments are either currently being maintained or could be attained in the future without "substantial adverse economic or social costs." Therefore, no other alternatives to these use classifications appear to be feasible or warranted.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, rules, regulations, or government policy are in conflict with this regulation.

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA

(6) Any additional information or comments: None provided.

Tiering:

Was tiering applied? No. Tiering was not applied since the regulation affects all wastewater treatment plants (discharges) in the basins irrespective of ownership, capacity, or unit processes or treatment employed.

APPENDIX A

COLDWATER AQUATIC HABITAT STREAM USE CLASSIFICATION FOR WATERS OF THE COMMONWEALTH

<u>Basin/Stream</u>	<u>Zone</u>	<u>County(ies)</u>	<u>Use Classification 1./</u>
I. <u>Big Sandy Basin</u>			
Hood Creek	Source to Wheeler Branch	Johnson/Lawrence	CAH, PCR, SCR
II. <u>Upper Cumberland Basin</u>			
Bad Branch	Basin	Letcher	CAH, PCR, SCR
Shillalah Creek	Source to Cumberland Gap NHP boundary	Bell	CAH, PCR, SCR
Bark Camp Creek	Basin	Whitley	CAH, PCR, SCR
Bunches Creek	Basin	Whitley	CAH, PCR, SCR
Breeden's Creek	Basin	Harlan	CAH, PCR, SCR
Kelly Branch	Basin	Harlan	CAH, PCR, SCR
Cogur Fork	Basin	McCreary	CAH, PCR, SCR
Beaver Creek	Basin	McCreary	CAH, PCR, SCR
Cane Creek	Basin	Laurel	CAH, PCR, SCR
Dogslaughter Creek	Basin	Whitley	CAH, PCR, SCR
Rock Creek ^{2./}	Tennessee-Kentucky State Line to White Oak Creek	McCreary	CAH, PCR, SCR, ORW
Difficulty Creek	Basin	McCreary	CAH, PCR, SCR

Appendix A continued

Cumberland River	Cumberland Lake Dam to Hwy 90 (RMI 426.5)	Russell	CAH, PCR, SCR
Fugitt Creek	Basin	Harlan	CAH, PCR, SCR
Looney Creek	Basin	Harlan	CAH, PCR, SCR
Martin's Fork ^{2./}	Source to Hwy 987 (RMI 27.4)	Harlan	CAH, PCR, SCR, ORW
Poor Fork	Source to Jefferson National Forest Boundary (RMI 720.55)	Letcher	CAH, PCR, SCR
Troublesome Creek	Basin	McCreary	CAH, PCR, SCR
Sugar Run	Source to Cumberland Gap NHP boundary	Bell	CAH, PCR, SCR
Razor Fork	Basin	Harlan	CAH, PCR, SCR
III. <u>Green River Basin</u>			
Beaver Dam Creek	Source to Green River	Edmonson	CAH, PCR, SCR
Lick Fork Creek	Source to W. Fork Drakes Creek	Simpson	CAH, PCR, SCR
Lynn Camp Creek	Source to Green River	Hart	CAH, PCR, SCR
Roundstone Creek	Source to HWY 1140 (RMI 3.5)	Hart	CAH, PCR, SCR
Trammel Fork	Source to Hwy 31E (RMI 23.6)	Allen	CAH, PCR, SCR
Buffalo Creek	Source to Green River (in Mammoth Cave N.P.)	Edmonson	CAH, PCR, SCR
Mammoth Cave Park ^{2./}	Underground river system	Edmonson/Hart	CAH, PCR, SCR, ORW
IV. <u>Kentucky River Basin</u>			
Chimney Top Creek	Basin	Wolfe	CAH, PCR, SCR
East Fork Indian Creek	Source to Indian Creek	Menifee	CAH, PCR, SCR
Middle Fork Red River	Source to access road 0.3 miles above Rock Quarry	Powell	CAH, PCR, SCR
Gladie Creek	Basin	Menifee	CAH, PCR, SCR
Swift Camp Creek	Source to Red River	Wolfe	CAH, PCR, SCR
V. <u>Licking River Basin</u>			
Craney Creek	Source to North Fork Licking River	Rowan	CAH, PCR, SCR
VI. <u>Little Sandy River Basin</u>			
Big Caney Creek	Source to Grayson Lake	Elliott/Rowan	CAH, PCR, SCR
Laurel Creek	Source to Little Sandy River	Elliott/Rowan	CAH, PCR, SCR
VIII. <u>Ohio River Basin Mainstem and Minor Tributaries</u>			
Doe Run Creek	Source to KY Hwy 1628 (RMI 5.15)	Meade	CAH, PCR, SCR
Sinking Creek	Source to Hwy 259 (RMI 4.0)	Breckinridge	CAH, PCR, SCR

Appendix A continued

XIII. Lower Cumberland Basin

Casey Creek	Source to Little River	Christian/Trigg	CAH, PCR, SCR
Skinframe Creek	Source to Livingston Creek	Caldwell/Lyon	CAH, PCR, SCR
Sulphur Spring Creek	Source to Red River	Simpson	CAH, PCR, SCR

- 1./ Use classifications - CAH (Coldwater Aquatic Habitat), PCR (Primary Contact Recreation), SCR (Secondary Contact Recreation), ORW (Outstanding Resource Water);
- 2./ Will be designated as outstanding resource water with coldwater aquatic habitat criteria; segments harbor coldwater species, however, they also meet criteria for automatic inclusion under outstanding resource water use classification (i.e. federal endangered and threatened species or wild rivers); segments are listed in both Appendix A and C.

APPENDIX B**COLDWATER SEGMENTS RECEIVING WASTEWATER DISCHARGES**

<u>River Basin/Stream</u>	<u>County(ies)</u>	<u>Discharges</u>
Green River Basin		
o Lynn Camp Creek	Hart	Green R. Sand & Gravel
Kentucky River Basin		
o Middle Fork Red River	Powell	Natural Bridge St. Park
o Swift Camp Creek	Wolfe	Discharge 007 (no listing)
o Chimney Top Creek	Menifee	USDA-Frenchburg CCC
	Powell	KY Dept. of Parks-Natural
		Bridge State Park
		Hinkle Contracting Co.
	Wolfe	Dessie Scotts Childrens
		Home
Ohio River Basin		
o Sinking Creek	Breckinridge	Breckinridge Co. Housing
		Authority

APPENDIX C

Outstanding Resource Water
Stream Use Classification For Waters of the Commonwealth
(Automatic Inclusion Category)

<u>Basin/Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification^{1./}</u>
I. Upper Cumberland River Basin			
Buck Creek	RMI 47.7 - 10.5	Pulaski	WAH, PCR, SCR, ORW (FE&T)
Horse Lick Creek	RMI 12.3 - 0.0	Jackson/Rockcastle	WAH, PCR, SCR, ORW (FE&T)
Kennedy Creek	RMI 1.0 - 0.0	Wayne	WAH, PCR, SCR, ORW (FE&T)
Middle Fork, Rockcastle River	RMI 61.1 - 41.3	Jackson/Laurel/Rockcastle	WAH, PCR, SCR, ORW (FE&T)
Big South Fork Cumberland River	RMI 55.2 - 45.0	McCreary	WAH, PCR, SCR, ORW (WR, I)
Cumberland River	RMI 574.6 - 558.5	McCreary/Whitley	WAH, PCR, SCR, ORW (WR, I)
Little South Fork Cumberland River	RMI 35.6 - 4.1	Wayne	WAH, PCR, SCR, ORW (WR, I)
Martin's Fork Cumberland River ^{2./}	RMI 31.3 - 27.4	Harlan	CAH, PCR, SCR, ORW (WR)
Rock Creek ^{2./}	RMI 21.9 - 3.9	McCreary	CAH, PCR, SCR, ORW (WR)
Rockcastle River	RMI 27.9 - 8.5	Laurel/Pulaski/Rockcastle	WAH, PCR, SCR, ORW (WR, I)
II. Green River Basin			
Green River	RMI 225.9 - 181.7	Edmonson/Hart	WAH, PCR, SCR, ORW (WR, I)
Green River	RMI 168.0 - 148.0	Butler/Warren	WAH, PCR, SCR, ORW (FE&T)
Mammoth Cave Park ^{2./}	underground river system	Edmonson/Hart	CAH, PCR, SCR, ORW (FE&T)
I. Kentucky River Basin			
Red River	RMI 68.6 - 59.5	Menifee/Wolfe	WAH, PCR, SCR, ORW (WR)

IV. Tennessee River Basin

Tennessee River RMI 22.4 - 11.0 Livingston/Marshall WAH, PCR, SCR, ORW (FE&T)

- 1./ Use Classifications - CAH (Coldwater Aquatic Habitat), WAH (Warmwater Aquatic Habitat), PCR (Primary Contact Recreation), SCR (Secondary Contact Recreation), ORW (Outstanding Resource Water); criteria for ORW inclusion - FE&T (Federal Endangered and Threatened Species), WR (Wild River).
- 2./ Will be designated as Outstanding Resource Water with coldwater aquatic habitat criteria; segments harbor coldwater species, however, they also meet criteria for automatic inclusion under outstanding resource water use classifications (i.e., federal threatened and endangered species or wild rivers); segments are listed in both Appendix A and C.

APPENDIX D

**OUTSTANDING RESOURCE WATERS (AUTOMATIC INCLUSION CATEGORY
RECEIVING WASTEWATER DISCHARGES)**

<u>River Basin/Stream</u>	<u>County(ies)</u>	<u>Discharges</u>
Upper Cumberland River Basin		
o Cumberland River	Whitley	KY DOT-Rt. 90 Roadside Park KY Dept. of Parks-Cumberland Falls KY Dept. of Parks-Cumberland Falls WTP
	McCreary	Holiday Motor Lodge Eagle Elementary School
o Middle Fork, Rockcastle River	Jackson	McKee STP Camp Andrew Jackson McKee Elementary School Tyner Elementary School William's Gas and Grocery Jackson Co. Water Assn. - WTP
o Buck Creek	Pulaski	Shopville School Eubank Service Station Rt. 27 Eubank Elementary School KY Stone Co. (Somerset) Masten Dairy Farm Mullins Dairy Farm Hawkins Dairy Farm Henderson Dairy Farm
	Lincoln	Waynesburg Elementary School Kings Mountain Elem. School Highland Elementary School
	Rockcastle	Parsons Dairy Farm
Tennessee River Basin		
o Tennessee River	Livingston	Ledbetter Elementary School BRT Transfer Terminal Inc.
	Marshall	Pennwalt Corp. GAF Corp. SKW Alloys, Inc. Airco Carbide Air Products & Chemicals B.F. Goodrich Chem. Co. KY Dept. Parks-Kentucky Dam Village Wade Hog Parlor TVA-Kentucky Dam Hydro. Plant LWD, Inc. (Calvert City)

APPENDIX E

STREAM USE CLASSIFICATIONS FOR PRIORITY STREAM SEGMENTS
ASSOCIATED WITH KENTUCKY WASTEWATER TREATMENT CONSTRUCTION GRANTS

TYGARTS CREEK BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification and Additional Criteria</u>
<u>Buffalo Creek</u>	<u>Source to Tygarts Creek</u>	<u>Carter</u>	<u>WAH, PCR, SCR</u>
<u>Little Whiteoak Creek</u>	<u>Source to Tygarts Creek</u>	<u>Greenup</u>	<u>WAH, PCR, SCR</u>
<u>Tygarts Creek</u>	<u>Source to Ohio River</u>	<u>Greenup</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Whiteoak Creek</u>	<u>Source to Tygarts Creek</u>	<u>Greenup</u>	<u>WAH, PCR, SCR</u>

LICKING RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification and Additional Criteria</u>
<u>Fleming Creek</u>	<u>Source to Licking River</u>	<u>Fleming</u>	<u>WAH, PCR, SCR</u>
<u>Slate Creek</u>	<u>Source to Licking River</u>	<u>Bath/Montgomery/ Menifee</u>	<u>WAH, PCR, SCR</u>

KENTUCKY RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification and Additional Criteria</u>
<u>ver Creek</u>	<u>Source to Kentucky River</u>	<u>Madison</u>	<u>WAH, PCR, SCR</u>
<u>South Fork Elkhorn Creek</u>	<u>Source to North Fork Elkhorn Creek</u>	<u>Franklin</u>	<u>WAH, PCR, SCR</u>
<u>Town Branch</u>	<u>Source to South Fork Elkhorn Creek</u>	<u>Fayette</u>	<u>WAH, PCR, SCR</u>

SALT RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification and Additional Criteria</u>
<u>Chenoweth Run</u>	<u>Source to Floyds Fork</u>	<u>Jefferson</u>	<u>WAH, PCR, SCR</u>
<u>Currys Fork</u>	<u>Confluence of South and North Forks to Floyds Fork</u>	<u>Oldham</u>	<u>WAH, PCR, SCR</u>
<u>Floyds Fork</u>	<u>Source to Salt River</u>	<u>Bullitt/Jefferson/ Shelby/Oldham/Henry</u>	<u>WAH, PCR, SCR</u>
<u>Mill Creek</u>	<u>Source to Salt River</u>	<u>Bullitt</u>	<u>WAH, PCR, SCR</u>
<u>North Fork of Currys Fork</u>	<u>Source to South Fork of Currys Fork</u>	<u>Oldham</u>	<u>WAH, PCR, SCR</u>
<u>Unnamed tributary to Mill Creek</u>	<u>Source to Mill Creek</u>	<u>Oldham</u>	<u>WAH, PCR, SCR</u>

ADMINISTRATIVE REGISTER

GREEN RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification and Additional Criteria</u>
<u>Black Lick Creek</u>	<u>Source to Clear Fork</u>	<u>Logan</u>	<u>WAH, PCR, SCR</u>
<u>Cypress Creek</u>	<u>Source to Pond River</u>	<u>Muhlenberg/McClean</u>	<u>WAH, PCR, SCR</u>
<u>Gasper River</u>	<u>Source to Barren River</u>	<u>Warren</u>	<u>WAH, PCR, SCR</u>
<u>Green River</u>	<u>River mile 181.7 to river mile 168.0</u>	<u>Edmonson/Warren</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Green River</u>	<u>River mile 148.0 to Ohio River</u>	<u>Edmonson/Hart</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Mud River</u>	<u>Source to Green River</u>	<u>Butler</u>	<u>WAH, PCR, SCR</u>
<u>Wiggington Creek</u>	<u>Source to Gasper River</u>	<u>Logan</u>	<u>WAH, PCR, SCR</u>

TRADEWATER RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification and Additional Criteria</u>
<u>Craborchard Creek/ Vaughn Ditch</u>	<u>Source to Tradewater River</u>	<u>Webster</u>	<u>WAH, PCR, SCR</u>
<u>Montgomery Creek</u>	<u>Source to Tradewater River</u>	<u>Caldwell</u>	<u>WAH, PCR, SCR</u>
<u>Tradewater River</u>	<u>Source to Ohio River</u>	<u>Crittenden</u>	<u>WAH, PCR, SCR</u>

OHIO RIVER BASIN (Main Stem and Minor Tributaries)

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification and Additional Criteria</u>
<u>Ohio River</u>	<u>Big Sandy River (river mile 664.15) to Mississippi River</u>		<u>WAH, PCR, SCR, DWS</u>

UPPER CUMBERLAND RIVER BASIN

<u>Stream</u>	<u>Zone</u>	<u>County</u>	<u>Use Classification and Additional Criteria</u>
<u>Beaver Creek</u>	<u>Source to Lake Cumberland</u>	<u>Wayne</u>	<u>WAH, PCR, SCR</u>
<u>Poor Fork Cumberland River</u>	<u>River mile 720.55 to Clover Fork Cumberland River</u>	<u>Harlan</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Roundstone Creek</u>	<u>Source to Rockcastle River</u>	<u>Rockcastle</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Yellow Creek</u>	<u>Source to Cumberland River</u>	<u>Bell</u>	<u>WAH, PCR, SCR</u>

APPENDIX F

**Priority Stream Segments Associated With
Kentucky Wastewater Treatment Constructions
Grants Receiving Wastewater Discharges**

<u>Basin/Stream</u>	<u>County</u>	<u>Discharges</u>
Salt River Basin		
o Floyds Fork (including Chenoweth Run, Currys Fork, North Fork Currys Fork)	Bullitt	KYDOT Service Area Hebron Junior High School Brooks Elementary School Maryville Subdivision (1-4) Blue Lick Sewer Corp. Briarwood Village MHP F&E MHP L&N Golf Club Solite Quarry Lakeview MHP Bullitt Hills Subdivision Preston Parkway MHP Overdale Elementary School Oaks Mobile Home Park Hunters Hollow Subdivision Big Valley MHP Christman Dairy Farm Bullitt County Stone Co.
	Jefferson	Hollie Oak Club Treasure Island Larkgrove Subdivision McNeely Lake Village Subdivision Smith Residence Matthews Residence Entine Residence Maple Grove Sec. #5 Costello Residence Hidden Valley Motel Fairmont Gardens Liquor Pleasant Valley Subdivision Apple Valley Subdivision Beulah Land Estates Twin Cedars Steak House Zelma Fields Subdivision Cedar Heights MHP Gainsborough Subdivision Dickerson Residence Weisenberger Residence Bates Elementary School Buchko Residence Birchwood Subdivision Cedar Lake Park Subdivision Williams Residence Fern Creek Sewer Company Taylor Residence Henson Residence Idlewood Subdivision Zuercher Residence Shelton Residence Farmgate Subdivision The Pines Subdivision Martin Marietta Jump Residence Phillips Residence Lake of the Woods Subdivision Burns Residence Webber-Williams Residence Louisville-Jefferson County Chenoweth Park Montgomery Residence Chenoweth Hills Subdivision Laudherr Residence Obannon Residence Shiflet Residence Jeffersontown STP
o Floyds Fork	Jefferson	

Appendix F continued

Salt River Basin	Shelby	Jones Plastic & Engineering Corp.
		McGruder Residence
o Floyd's Fork cont.		Jones Residence
		Starrett Residence
		Sims Residence
		Cedar Ridge Presbyterian Camp
		Buechler Residence
		Orio Residence
		Conner Residence
		Cross Creek Subdivision
		Running Creek Subdivision
		Stallings Residence
		Furniture Showrooms
		Pearce Residence
		Eastwood Apts.
		Beckley Woods Subdivision
		Starview Estates Subdivision
		Steel Service Company
		Martin Marietta Co. (AVOCA)
		Metro. Sewer Dist. (Berrytown)
		Jefferson Co. Police Dept.
		(Academy)
		Murry Co. - AVOCA
		English Station Subdivision
		Middletown Industrial Park
		Douglas Hills Subdivision
		Holloway Ready Mix
		Middletown Vehicle Maint.
		Newman Residence
		Copperfield Subdivision
		KYDOT - Corr. Inst. for Women
		KYDOT - I64 Rest Areas
		Whitney Young Job Corps Center
		Middletown MFG
		Miller Dairy
	Oldham	Cherrywood Apts.
		Thornhill MHP
		Crestwood Elementary School
		Kavanaugh Camp
		Egelhoff Residence
		Jones Residence
		Future Federal Residence
		Friendship Manor Nursing Home
		Ash Avenue Sewer Co.
		Country Village Subdivision
		Lockwood Estates Subdivision
		Green Valley Apts.
		Days Inn/Tasty World
		VCA Kentucky
		Standard Oil Service Station
		Cedar Lake Lodge
		Centerfield Elementary School
		Hartzell Residence
		Gambill Residence
		Lessig Residence
		Parrish Residence
		Lakewood Valley Subdivision
		Casey Residence
		Sunoco Service Station
		Golf Club of Kentucky
		Jack's Big O
		Dooling Residence
		Lasher Residence
		Evans Residence
		Laplant Residence
		Fleming Residence
		Smith Residence
		Sayer Residence
		Frederick Residence
		Arbuckle Residence

Appendix F continued

			Meadow Creek Farm Subdivision S. Oldham Church of God Sears Residence LaGrange STP
	Henry		Coombs Dairy Farm Gray Dairy Farm
o Mill Creek (including unnamed tributary to Mill Creek)	Hardin		U.S. Army - Fort Knox Radelcliff STP Airview Estates Airport Bowling Lanes Cen-Ken Stone Co. Hardin Co. North Elementary Sch.
Ohio River Basin			
o Craborchard/ Vaughn Ditch	Webster		City of Clay STP Dixon Coin Laundry Webster Co. High School Dixon Elementary School City of Providence (Shane Mfr.) Webster Co. Coal Co. (Bath House) Webster Co. Coal Co. (Prep. Plt) LWD Inc. Pyro Mining Co. #2 Circle B Coal Prep. Plant Ky. Baptist Day Care Center Pyro Mining Co.
	Union		Pyro Mining Co. #11 Pyro Mining Co. #2 Prep. Plant
o Tradewater River (including Montgomery Creek)	Hopkins		Dawson Springs STP U of K Dawson Springs 4-H Camp St. Charles School Nestier Corp. Dawson Springs WTP Chappell Coal Co. Prep. Plant
	Christian		KY Dept. of Parks - Pennyrile State Park Midway Truck Stop KY Dept. of Human Resources - Excepticon Williamson Hog Farm
o Tygarts Creek (including Buffalo Creek, Little Whiteoak Creek and Whiteoak Creek)	Greenup		Greenup Co. Voc. School Columbia Hydrocarbon Didier - Taylor Mfr.
	Carter		Carter City Elementary School Upper Tygart Jr. High School Lawton Elementary School W. Carter High School Blevins Food Market Counts Cross Road Voc. School Kisers Standard Oil Station Olive Hill STP Blueberry Hills Subdivision East Kentucky Paving ACME Stone Co. Ken-More Stone Co. Oney Funeral Home

Appendix F continued

o	Ohio River Mainstem	Boyd	Ashland WTP Armco Steel-Westworks Ashland STP
		Greenup	South Shore STP Dupont Wurtland Plant Worthington STP Greenup Co. Env. Comm. Chessie Systems RR (2) Boyd/Green San. Dist. #1
		Lewis	Vanceburg STP
		Mason	Maysville Utility Comm. WTP Maysville STP
		Bracken	Augusta STP
		Campbell	Newport WTP Kenton Co. Water Dist. #1
		Kenton	Campbell/Kenton San. Dist. #1
		Boone	Cincinnati G&E Power Plant
		Carroll	M&T Chemicals, Inc. DOW Corning Corp. KY Utilities-Ghent Power Plt.
		Jefferson	Louisville G&E Mill Creek (3) Louisville G&E Cane Run (5) Borden Chemical Co. Stauffer Chemical Co. American Synthetic Rubber Rohn & Haas Co. (2) Louisville G&E Paddys Run (5) Metro. Sewer Dist. (Morris Foreman) Ashland Oil Refinery Louisville Water Co. WTP B.E. Payne WTP
		Hardin	West Pont STP
		Meade	Brandenburg STP Olin Corp. Brandenburg (2)
		Breckinridge	Cloverport STP
		Hancock	Lewisport STP Natl. Southwire Alum. (2) Willanette Ind. - Corrug Med. Mill Willanette Ind. - Pulp Div.
		Daviess	Owensboro STP Owensboro Mun. Utilities Plant Owensboro Mun. Utilities - Elmer Smith (2) WR Grace - Owensboro
		Henderson	Custom Resins Henderson STP Henderson FWR & Light Henderson Mun. WTP
		Union	Sturgis WTP Uniontown WTP Morganfield WTP
		McCracken	Paducah WTP Paducah STP TVA-Shawnee Power Plant (3)

Appendix F continued

Upper Cumberland River Basin

o	Beaver Creek	Wayne	Monticello STP Mago Construction Co. KOA Campground Nat. Guard Armory
o	Poor Fork	Harlan	Cumberland STP Harlan Machine & Electric Harlan Co. Steam and Stoker Benham STP Benham Coal Prep. Plant U.S. Steel Mine #33 U.S. Steel Mine #35 U.S. Steel Mine Corp. 7 U.S. Steel Mine Corp. #32 U.S. Steel Mine Corp. #37 Lynch STP
		Harlan	Ky. Dept. of Parks-Kingdom Come Ky. Dept. of Parks-Kingdom Come Lilly C. Shopping Center Cumberland STP Harlan Central Coal Prep. Plant Cumberland Valley RECC Lynch WTP
		Letcher	Scotia Coal Prep. Plant Scotia Coal Office Eolia Elementary School Scotia Coal Co. Bathhouse
o	Roundstone Creek	Rockcastle	Holiday Restaurant Kentuckian Motel Renfro Valley Exxon Southern Dollar Store Mt. Vernon STP Gregory Motel Beaker Oil Co. Renfro Valley Sunoco Shell Service Station KIWI Drive-In Renfro Valley Motel Mt. Vernon WTP Roundstone Elementary School Renfro Valley Standard Quality Gasoline Station Baker Restaurant RBS, Inc. Prep. Plant Holiday Motel Exit 59 Gulf Station Benle Coal Corp. Tipple
o	Yellow Creek	Bell	Pineville Health Care KY Virginia Stone Pineville WTP Ward Chapel MHP Old Fashion Dairy Bar Middlesboro STP Texaco Bulk Plant KY Water Service Bell Co. Coal Corp. Prep. Plant Middlesboro Tannery Pineville STP Ambleside LTD Development New Hignite Coal Co.

ADMINISTRATIVE REGISTER

Appendix F continued

Kentucky River Basin

- o South Elkhorn Creek Fayette
(including Town Branch)

R.J. Reynolds Co.
Monticello Subdivision
South Elkhorn Service Co.
U.S. Army Natl. Guard-Lexington
Keenelodge Motor Inn
Keeneland Race Course
Lexington STP (Town Branch)
U.S. DOJ-Fed. Correctional Inst.
KY DOJ-Blackburn Correctional
Inst.
American Can Company
Ashland Bulk Plant
Central Rock Co.
Congleton Concrete Plant
Texaco Bulk Plant
Lex-Fayette Co. Land Fill

Woodford

Midway STP
KY DOT I-64 Rest Areas
Stegall Residence

Franklin

Mitchell MHP
Bendix Westinghouse

- o Silver Creek

Madison

Brocklyn Subdivision
KY DOT I-75 Rest Areas
Executive Park Subdivision
C&R Rentals/Richmond Tool & Die
Okonite Cable Company
AJAX Magnethermic
U.S. Army-Bluegrass Army Depot
Kingston Elementary
Berea STP
Silver Creek Elementary
Pinnacle View HMP
USDA Forest Service Office
Appalachian Bldg. Supply Co.

Licking River Basin

- o Fleming Creek

Fleming

Ashland Oil Bulk Plant #239
Flemingsburg STP
Sorrells Restaurant
Corey Adams Inc.
Leit Laundry
Flemingsburg WTP
Carpenter Dairy Farm
Hickerson Dairy Farm
Gooding Dairy Farm
Fox Valley Packing
Browning Dairy Farm

- o Slate Creek

Bath

Ridgeway Manor Nursing Home
Owingsville STP

Montgomery

Hope Hill Childrens Home
Camargo First Church of God
Camargo Elementary School
Clay Residence
Knox Hog Farm
Montgomery San. Dist. #2

Green River Basin

- o Blacklick Creek/
Gasper River Logan
(including Wiggington
Creek)

Auburn STP
Caldwell Lace Leather Co.

Appendix F continued

	Warren	Ellis Hog Farm Bush Hog Farm Jones Dairy Farm
o Mud River	Butler	Third District Elementary School Natl. Eastern Petro. Durango Devel. Co. Grayson Flag Drilling Co. (Smith Lease) W.H. Greer (Ross Lease) W.H. Greer (Kirby Lease) W.H. Greer (Brown Lease) W.H. Greer (Anderson Lease) W.H. Greer (Anderson Lease) Billy Phillips Heirs Harper
	Logan	Lewisburg STP Chandlers Chapel Elementary School Griffen Industries, Inc. Russellville STP Emerson Electric IL Duncan Jr. Dist. Ky Stone-Russellville Rockwell Mfr. Co. Tradewater Land and Cattle Co. Brown Hog Farm TARCO Inc. (Tar Sand) Anaconda Ind. (Aluminum Rolling) Crescent Corp. (Tar Sand)
	Muhlenberg	KY Dept. of Parks (Lake Malone) Lake Malone Resort Lake Malone Elementary School Hughes-Kirk School Universal Operating Co. (Fleet Lease) Universal Operating Co. (McPherson Lease) Universal Operating Co. (Gibson Lease) David T Ford Brigance
	Todd	Sears Dairy Farm
o Cypress Creek	McLean	Island School Sacramento School
	Grayson	Moeller Hog Parlor
	Muhlenberg	Central City STP Carroll's Laundry Breman School Peabody Coal Prep. Plant Clements Job Corps Center ICGRR-Central City Peabody Coal-S.Star Mine Peabody Coal-Marmon Mine The Lake Peabody Coal-Star North Mine S and M Oil Co. (Paint Cr.) S and M Oil Co. (New Cypress) Creek Oil Co. (Vincent Lease)
o Green River (RMI 148.0 to Ohio River)	Webster	Sebree STP Hillcrest MHP Polly's Cafe Texas Gas Trans. Hopkinsville Stone Co. Donan Engng. - Sebree Onton Dock Inc. Sebree WTP Big Rivers RECC Tapp Hogg Farm Deer Creek Prod (Hog Farm)

ADMINISTRATIVE REGISTER

Appendix F continued

Anderson	Henderson Co. Country Club
	Hebbordsville School
	KY DOT-Aubrun Prkway-Toll
	Spottsville Elementary (old)
Daviess	Anaconda Alum. Smelter
	McKechnic Hog Farm (Reynolds Metals)
	KBI Div./Cabot Ind.
	Spottsville Elementary
McLean	Sargho School
	Gardenside Subdivision
	Moose Lodge 756
	O'Bryan Hog Farm
Muhlenberg	Atherton's General Store
	Green Coal Prep. Plant
	Calhoun STP
	Calhoun WTP
Ohio	Charles Chips
	Livermore STP
	Barmet of KY Livia Plt.
	McElwain Hog Farm
Green River (RMI 181.7-168.0)	Island STP
	CW Lee Oil Co.
	CW Lee Oil Co. (Chissom lease)
	Brown Badget Coal Co.-Dock
Butler	Peabody Coal Prep. Plt (Gibraltar)
	Ky. Utilities-Green River Station
	Peabody Coal Lab. (Central City)
	P&M Coal-Paradise Mine
Edmonson	Central City WTP
	Peabody Coal-Sinclair #2
	TVA-Paradise Power Plant
	United Coal Sales-Dock
Warren	Peabody Coal-Martwick Mine
	Peabody Coal Alston #3
	Webster Elementary
	Peabody Coal KenMine
Butler	Western Engng.-Dock
	Peabody Coal Prep. Plant
	Big Rivers RECC
	Fourth Dist. Elementary
Edmonson	Brownsville STP
	Edmonson Co. WD Brownsville
	Kensyntar
	Young Dairy
Warren	Bowling Green WTP

APPENDIX G

TYPE AND NUMBER OF ENTITIES ASSOCIATED WITH PRIORITY CONSTRUCTION GRANT
SEGMENT USE DESIGNATIONS BY RIVER BASIN AND STREAM SEGMENT

	<u>State or Federal Institutions</u>	<u>County or Municipal Institutions</u>	<u>Quasi- Public Institutions</u>	<u>Commercial Retail/Wholesale Establishments</u>	<u>Manufacturers</u>	<u>Agriculture Interests</u>	<u>Coal, Sand, & Gravel Mining/Oil Operations</u>	<u>Residential Properties</u>
Salt River Basin								
o Floyds Fork	3	13	4	16	7	4	2	90
o Mill Creek	1	2	0	1	0	0	0	2
Ohio River Basin								
o Craborchard/Vaughn Ditch	0	3	1	2	1	0	7	0
o Tradewater River	2	3	1	1	1	1	1	0
o Tygarts Creek	0	7	0	4	2	0	2	1
o Ohio River Mainstem	1	30	0	7	15	0	0	0
Upper Cumberland River Basin								
o Beaver Creek	1	1	0	2	0	0	0	0
o Poor Fork	2	6	1	2	0	0	11	0
o Roundstone Creek	0	3	0	15	0	0	2	0
o Yellow Creek	0	4	0	3	1	0	3	2
Kentucky River Basin								
o South Elkhorn Creek	5	2	0	3	4	1	1	4
o Silver Creek	3	3	0	3	1	0	0	3
Licking River Basin								
o Fleming Creek	0	2	0	3	1	5	0	0
o Slate Creek	0	3	1	2	0	1	0	1
Green River Basin								
o Blacklick Creek/Gasper River	0	1	0	0	1	3	0	0
o Mud River	1	6	0	2	4	3	16	0
o Cypress Creek	1	4	0	3	0	1	7	0
o Green River (RMI 148.0-0)	1	12	3	6	3	5	18	2
o Green River (RMI 181.7-168.0)	0	4	0	0	1	0	0	0
TOTALS	21	109	11	75	42	24	70	105

**TRANSPORTATION CABINET
Department of Highways
(Proposed Amendment)**

603 KAR 3:051. Recyclers.

RELATES TO: KRS 177.905 to 177.950

PURSUANT TO: KRS [13.082, 174.050, 177.912,]
177.935

NECESSITY AND FUNCTION: KRS 177.935 authorizes the *Department* [Bureau] of Highways to exercise general supervision of the administration and enforcement of KRS 177.905 to 177.950. This regulation *pertaining to the operation of automobile, vehicle, machinery or material recycling establishments has been* [is] adopted to enable the *Transportation Cabinet* [Department of Transportation] to administer and enforce the *recycler program* [these] requirements. [Chapter 114, Acts of 1978 necessitate a new regulation.]

Section 1. No person shall operate or cause to be operated any recycling establishment or place of business within 1,000 feet of the right-of-way line of any road as hereinafter defined, except for the following:

(1) Those recycling establishments or places of business[es] which comply with KRS 177.905 through 177.950 and these regulations; and

(2) A recycling establishment or place of business which is located in an industrially zoned area and is a conforming land use under applicable zoning ordinances and regulations of any county or city.

Section 2. Definitions. (1) "Automobile, vehicle or machinery recyclers" means any place where five (5) or more junked, wrecked or non-operative automobiles, vehicles, machinery or other similar scrap or salvage materials are deposited, parked, placed or otherwise located, *or any business as defined in Section 2(9) where ten (10) or more junked, wrecked or non-operative automobiles, vehicles, machines and other similar scrap or salvage materials are deposited, parked, placed or otherwise located.*

(2) "Department" ["Bureau"] means the *Department* [Bureau] of Highways in the *Transportation Cabinet* [Department of Transportation].

(3) "Commissioner" means the Commissioner of the *Department* [Bureau] of Highways.

(4) "Material recyclers" means any establishment or place of business, including garbage dumps and sanitary landfills, maintained, operated, or used for storing, keeping, buying or selling of old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste, or motor vehicle parts, iron, steel, and other old scrap ferrous or nonferrous material excepting therefrom any containers, such as "dempster dumpsters," which are maintained, operated or used for storing or keeping garbage, trash and other waste material.

(5) "Operator or operators" means any person, firm or corporation operating an automobile, vehicle, machinery or material recycling establishment or place of business or allowing such automobile, vehicle, machinery or material recycling establishment or place of business to be placed, or deposited, or to remain on the premises owned or controlled by such person, firm or corporation.

(6) "Person" means any individual, firm, agency,

company, association, partnership, business trust, joint stock company, body politic or corporation.

(7) "Recycling establishment" or "place of business" means any place operated, maintained or allowed to exist by any automobile, vehicle or machinery recyclers or any material recyclers.

(8) "Road" means any county, state, federal or limited access highway or turnpike, including bridges and bridge approaches.

(9) "Business" means any person engaged as an automobile dealer, body shop operator, wrecker service operator, service station operator or other activity which may buy, sell or repair non-operative vehicles, automobiles or machinery as a service.

Section 3. General Provisions. (1) No junked, wrecked or inoperable automobiles, vehicles, machinery or material scrap or parts shall be placed, deposited or otherwise located on the right-of-way of any road.

(2) Any recycling establishment or place of business shall be required to be completely hidden from view of the travelling motorist, for 1,000 feet in each direction from the outer limits of the premises or storage area, and to a depth of 1,000 feet from the right-of-way line, along all roads.

(3) Any recycling establishment or place of business which cannot as a practical matter be screened from view of the travelling motorist on all roads must be removed.

(4) The operation of any automobile, vehicle, machinery, or material recycling establishment or place of business which is located within 1,000 feet of the right-of-way of any road, without a permit from the *Department* [Bureau] of Highways, is declared to be a public nuisance.

(5) In the event an operator begins a recycling establishment or place of business in a new location, such location must be screened to comply with provisions of this regulation and have a current permit prior to the establishment thereof.

Section 4. Measurements. (1) In determining the 1,000 feet control distance from the right-of-way, the measurements shall be taken horizontally along a line at the same elevation and at a right angle to the center line of the highway.

(2) In measuring the 1,000 feet from the outer limits of the premises or storage area, in each direction, on all roads, two (2) lines shall be drawn perpendicular to the center line of the main travelled way, so as to cause the two (2) lines to embrace the greatest longitude along the center line of the main travelled way.

Section 5. Standards for Screening. (1) Completed screening must completely hide all junked, wrecked, or inoperable automobiles, vehicles, machinery, and materials from view of the travelling public on all roads on a year-round basis.

(2) Materials for screening must present an attractive appearance. No wrinkled or bent metal will be accepted.

(3) The completed screening must present a neat and clean appearance.

(4) Piecing out of metal or wood panels or patchwork type screening will not be accepted.

(5) Unless a continuous overall neat design is created, all metal or wood panels must be erected vertically.

(6) Fencing used for screening must be of uniform height and alignment unless a variation is approved by the *Department* [Bureau] of Highways.

(7) Completed screening must blend with the surrounding area as much as possible.

(8) In the event fencing materials must be painted in order to blend with the surrounding area, the colors and shades of buildings and other structures in the area may be taken into account, in determining the color and shade to be used on such fencing materials.

(9) If a building or other structure is to be used as a portion of the screening, the building or structure may be required to be painted, if it is deemed necessary, in order to blend with the other portions of screening and the surrounding area.

(10) If screening is to be effected by the use of plantings of trees or shrubs, the plantings to be used must be of sufficient height and density at maturity to [immediately] screen the recycling establishment or place of business from view of the travelling motorists on a year-round basis on all roads where control is exercised.

[(11) If screening by the use of plantings of trees and shrubs are not sufficient in height and density at the time of installation, a temporary screen must be erected and remain until such time as trees and shrubs are of sufficient height and density to screen the premises on a year round basis.]

(11) [(12)] Any operator of a recycling establishment or place of business shall file an application for a permit from the Department [Bureau] of Highways. A plot detailing the area to be used for the storing or keeping of recycling material, automobiles, vehicles or machinery, the location, height, length, kind of material to be used for screening and color of paint if required, shall accompany and be made a part of the application.

(12) [(13)] Approval of a screening proposal should be obtained from the Department [Bureau] of Highways prior to the erection of fencing or the planting of trees or shrubs to effect the screening required to hide the storage area from view of the travelling public. Failure to obtain such approval may result in the necessity of removing and re-erecting part or all screening in order to comply with standards for screening as set forth in this section.

Section 6. Requirements for Permit. (1) A permit is required for the operation of a recycling establishment or place of business.

(2) Permits shall be issued in the following manner:

(a) Permits shall be issued for a two (2) year period, or portion thereof, beginning on July 1 of even numbered years.

(b) Any recycling establishment or place of business existing or in operation on July 1 of even numbered years must remit the full permit fee regardless of the date of compliance with the Kentucky law and regulations.

(c) Any new recycling establishment or place of business which comes into existence after July 1 of even numbered years must remit a permit fee on a prorated basis as of the beginning date of the operation regardless of the date of compliance with the Kentucky law and regulations.

(d) The permit fee shall be fifty dollars (\$50) for the two (2) year period.

(e) The permit fee shall be two dollars and eight cents (\$2.08) per month for each month remaining in the two (2) year period, upon the beginning of a new operation.

(f) Permit fees [must be] in the form of a check or money order *must be made* payable to the "Treasurer, Commonwealth of Kentucky."

[(g) Cash for permit fees will not be accepted.]

(g) [(h)] Permit fees will not be accepted until the recycling establishment or place of business is in full compliance with the Kentucky law and regulations.

Section 7. Revocation of Permits. (1) Failure to comply with the Kentucky law and regulations shall be cause for the revocation of a permit.

(2) If a recycling establishment or place of business is found to be not in compliance, a reasonable time period shall be allowed for the operator to comply with Kentucky law and regulations.

Section 8. Appeal of Permit Revocation. (1) Any business or person aggrieved by an action taken by the Department of Highways in administering this regulation or the referenced Kentucky Revised Statutes may request a formal hearing. The request for the hearing shall be filed in writing with the Commissioner, Department of Highways and shall set forth the nature of the complaint and the grounds for the appeal.

(2) Within sixty (60) days of receipt of the hearing request, the Department of Highways shall notify the complainant of the date, time, and location of the hearing.

(3) At the time and place set for the hearing, the complainant will be able to present any and all evidence relevant to the disposition of his complaint.

(4) Within thirty (30) days after the hearing an order on the complaint shall be issued by the Commissioner of the Department of Highways. A copy shall immediately be mailed to the complainant.

A. STEPHEN REEDER, Commissioner

APPROVED BY AGENCY: August 14, 1984

FILED WITH LRC: August 15, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing will be held on this administrative regulation on Tuesday, September 25, 1984 at 1:30 p.m., EDT. The hearing location is the 4th floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must by 4:30 p.m., EDT on September 20, 1984 in writing so notify: Larry E. Moore, Chief Administrative Assistant, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, KY 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry E. Moore

(1) Type and number of entities affected: Approximately 100 Recycler (junkyard) establishments.

(a) Direct and indirect costs or savings to those affected: An average \$3,000-\$5,000 per establishment for each new recycler establishment.

1. First year: Same as above

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): New screening requirements will decrease cost to new establishments.

(b) Reporting and paperwork requirements: No new requirement by this regulation.

(2) Effects on the promulgating administrative body: Amendment has no direct effect on the Transportation Cabinet.

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Federal government relaxed their screening requirements and the state chose to follow suit.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. It was considered but decided that all recycler establishments must be treated the same.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Recycler Administrative Regulation

SPONSOR: Transportation Cabinet

NOTE SUMMARY

LOCAL GOVERNMENT MANDATE: No

TYPE OF MANDATE:

LEVEL(S) OF IMPACT:

BUDGET UNIT(S) IMPACT:

FISCAL SUMMARY: N/A

MEASURE'S PURPOSE: To amend administrative regulation governing recyclers to permit plantings for screening if at maturity they will shield establishment.

PROVISION/MECHANICS:

FISCAL EXPLANATION:

STATE RACING COMMISSION (Proposed Amendment)

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.210 to 230.360

PURSUANT TO: KRS 13A.350 [13.082]

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a rider and who never previously has ridden in a race may be permitted to ride in three (3) races before applying for a license as a jockey or apprentice jockey; provided, however:

(1) Such person is a licensee with at least one (1) year of service with a racing stable;

(2) A licensed trainer certifies in writing to the stewards that such person has demonstrated sufficient horsemanship to be permitted such probationary mounts;

(3) The starter has schooled such person breaking from the starting gate with other horses and approves such person as capable of starting a horse properly from the starting gate in a race;

(4) The stewards in their sole discretion are satisfied such person intends to become a licensed jockey, possesses the physical ability and has demonstrated sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other riders in such race. No such person shall be permitted to ride in any such probationary race without prior approval of the stewards.

Section 2. Qualifications for License. In addition to rules applicable to licensees under 810 KAR 1:003, a holder of a license as a jockey or apprentice jockey:

(1) Must be an individual person sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;

(2) Must have served at least one (1) year with a racing stable;

(3) Must have ridden in at least three (3) races;

(4) Must, when required by the stewards, provide a medical affidavit certifying such person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefor, must be approved by the stewards as to competency of horsemanship, must be granted a jockey's license, and such amateur status must be duly noted on the daily race program. A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. Any person sixteen (16) years of age or older, who never previously has been licensed as a jockey in any country, and who is qualified under Section 2 of this regulation, may claim in all purse races except handicaps the following weight allowances:

(1) Ten (10) pounds until he has ridden five (5) winners, and seven (7) pounds until he has ridden an additional thirty (30) winners; if he has ridden a total of thirty-five (35) winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year.

(2) After the completion of conditions in subsection (1) of this section a contracted apprentice for one (1) year may claim three (3) pounds when riding horses owned or trained by his original contract employer; provided, his contract has not been transferred or sold since his first winner. Such original contract employer shall be deemed the party to the contract who was the employer at the time of the apprentice jockey's first winner. No apprentice allowances may be claimed for a period in excess of three (3) years from the date of the rider's fifth winner.

(3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 for a period not to exceed five (5) years. Such contracts must be approved by the stewards and filed with the racing commission; such contracts shall be binding in all respects on the signatories thereof. An apprentice who is not contracted shall be given an apprentice jockey certificate, on a form furnished by the commission.

(4) In the event an apprentice jockey is unable to ride for a period of fourteen (14) consecutive days or more because of service in the armed forces of the United

States, or because of physical disablement, or because of restrictions on racing, the commission upon recommendation of the stewards and after consultation with the racing authority which first approved the original apprentice contract, may extend the time during which such apprentice weight allowance may be claimed for a period no longer than the period such apprentice rider was unable to ride.

(5) After completion of conditions in subsection (1), such rider must be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

Section 5. Rider Contracts. All contracts between an employer owner or trainer and employee rider are subject to the rules of racing. All riding contracts for terms longer than thirty (30) days, as well as any amendments thereto, or cancellation, or transfer thereof, must be in writing with signature of parties thereto notarized, must be approved by the stewards and filed with the commission. The stewards may approve a riding contract and permit parties thereto to participate in racing in this state if the stewards find that:

(1) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of execution of such contract;

(2) The contract employer possesses such character, ability, facilities, and financial responsibility as may be conducive to developing a competent race rider;

(3) Such contracts for apprentice jockeys provide for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel such contract after two (2) years from date of execution.

Section 6. Restrictions as to Contract Riders. No rider may: (1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;

(2) Ride or agree to ride any horse in a race without consent of his contract employer;

(3) Share any money earned from riding with his contract employer;

(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. Any rider not so prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer. Such agreements, if for terms of more than thirty (30) days, must be in writing, approved by the stewards, and filed with the commission. Any rider employed by a racing stable on a regular salaried basis may not ride against the stable which so employs him. No owner or trainer shall employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) *The purpose of this section is not to set a minimum or maximum fee, but merely to provide a fee in the event that the parties have not made any other agreement to the contrary.* The fee to a jockey [in all races] shall be, in the absence of special agreement, as follows:

(a) Purse \$2,000 to \$3,400: Winning mount, ten (10) percent of win purse; Second mount, \$45; Third mount, \$35; Losing mount, \$33 [30].

(b) Purse \$3,500 to \$4,900: Winning mount, ten (10) percent of win purse; Second mount, \$55 [50]; Third mount, \$45 [40]; Losing mount, \$35 [30].

(c) Purse \$5,000 to \$9,900 [and up]: Winning mount, ten (10) percent of win purse; Second mount, \$65 [55]; Third mount, \$50 [45]; Losing mount, \$40 [35].

(d) Purse, \$10,000 to \$14,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$45.

(e) Purse, \$15,000 to \$24,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$50.

(f) Purse, \$25,000 to \$49,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$60.

(g) Purse, \$50,000 to \$99,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$75.

(h) Purse, \$100,000 and up: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$100.

(2) A jockey fee shall be considered earned by a rider when he is weighed out by the clerk of scales except:

(a) When a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race; in such case, the owner or trainer shall pay an appropriate fee to each rider engaged for such race.

(b) When such rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, proper cause therefor.

(c) When such rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by such rider during the time between weighing out and start of the race.

Section 9. Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards. No rider shall be forced to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, such rider may be subject to disciplinary action.

Section 10. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall by physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards, or the clerk of scales; and upon arrival shall report to the clerk of scales his engagements. In the event a rider should fail for any reason to arrive in the jockey room prior to one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who thereupon may name a substitute rider and shall cause announcement to be made of any such rider substitution prior to opening of wagering on such race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location

approved by the stewards. Such rider shall have no contact or communication with any person outside the jockey room other than an owner or trainer for whom he is riding, or a racing official, or a representative of the regular news media, until such rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for such security of the jockey room as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall so notify the stewards after fulfilling his final riding engagement of the day he intends to depart.

Section 11. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and at the time of weighing out shall declare overweight, if any.

(2) No rider shall pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; in no event shall a rider pass the scale with more than five (5) pounds overweight.

(3) No horse shall be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, goggles, and rider's safety helmet shall not be included in a rider's weight.

Section 12. Wagering. No rider shall place a wager, or cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. Such owner or trainer placing wagers for his rider shall maintain a precise and complete record of all such wagers, and such record shall be available for examination by the stewards at all times.

Section 13. Attire. Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened. Each jockey shall wear the cap and jacket racing colors registered in the name of the owner of the horse he is to ride, stock tie, white or light breeches, top boots, safety helmet approved by the commission, and a number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program. The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

Section 14. Viewing Films or Tapes of Races. Every rider shall be responsible for checking the film list posted by the stewards in the jockey room the day after riding in a race, the posting of same to be considered as notice to all riders whose names are listed thereon to present themselves at the time designated by the stewards to view the patrol films or video tapes of races. Any rider may be accompanied by a representative of the jockey organization of which he is a member in

viewing such films, or with the stewards' permission, be represented at such viewing by his designated representative.

RICK NORTON, Executive Director

APPROVED BY AGENCY: July 26, 1984

FILED WITH LRC: August 14, 1984 at 1:15 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 25, 1984 at 10 a.m. at Suite 338, Bakhaus Building, 1500 West Main Street, Lexington, Kentucky. Those interested in attending this hearing shall contact in writing at least five days prior to the hearing the following office: Michael A. Fulkerson, Chief Administrative Officer, Kentucky State Racing Commission, P.O. Box 1080, Lexington, Kentucky 40588.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael A. Fulkerson

(1) Type and number of entities affected: Owners of horses and jockeys.

(a) Direct and indirect costs or savings to those affected:

1. First year: \$263, 819 is the approximate amount of the additional payments to jockeys. This figure is based on actual results in 1983 with the new fees applied.

2. Continuing costs or savings: Would fluctuate according to purses.

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: No charge.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Several scales were considered but they were used by only a couple of other states. The scale adopted by this change is the one adopted by the NASRC and is almost identical to others already used in 20 other states.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: 1) This regulation in the past and as proposed represents a **voluntary** schedule. Nothing in it would preclude an owner and trainer from contracting for a fee higher or lower.

2) Inflation has destroyed the integrity of the old schedule. In 1968, a jockey on an unplaced mount in a race with a \$5,000 purse would have received \$35. According to the Consumer Price Index, that would only be worth \$12.23 in 1984 dollars.

3) In 1968, no one could foresee the inflation to come

in the seventies but even those large increases were outpaced by prices paid for thoroughbreds. During this same time, purses have gone up with inflation and the old scale with a maximum category of "5000 and up" is no longer appropriate. For example, according to the old schedule, the second place finisher in a \$5,000 claiming race and the Kentucky Derby would both receive \$55. This is not equitable.

4) Since jockeys of winning horses get 10%, it can reasonably be argued that they have held their own due to simple inflation of purses. Unfortunately, the fixed dollar amounts for unplaced jockeys has not kept up. This new schedule will help to alleviate that problem.

Tiering:

Was tiering applied? Yes

**PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Harness Racing Commission
(Proposed Amendment)**

811 KAR 1:090. Stimulants and drugs.

RELATES TO: KRS 230.630(1), (3), 230.640, 230.700
PURSUANT TO: KRS [13.082,] 230.630(3), (4), (7)

NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to provide for the testing of horses for stimulants and drugs and the regulation of stimulants and drugs.

Section 1. (1) At every meeting except as stated herein where pari-mutuel wagering is permitted, the winning horse in every heat and/or race shall be subjected to a urine test and/or a blood test and the winning horse and second place horse in every perfecta or quinella race may be subjected to a urine test and/or a blood test for the purpose of determining thereby the presence of any drug, stimulant, sedative, depressant, or medicine. The winning horse and/or the second and third horses in a trifecta may be tested the same as in the rule above. Also, the judges may order any horse in a race to be subjected to a urine, blood and/or saliva test. Such tests shall be made only by qualified veterinarians and by laboratories designated by the commission. In addition to the above, the winning horse and second horse in every heat or dash of a race at any track with a total purse in excess of \$5,000 may be subjected to both blood and a urine test. *Positive tests during time trials shall be treated as a violation. The winning time shall be disallowed and the trainer of record may be fined, suspended or both.*

(2) The commission may, in its discretion, or at the request of a member, authorize or direct a saliva, blood, urine or other test of any horse racing at any meeting.

Section 2. (1) During the taking of the blood and/or urine sample by the veterinarian, the owner, trainer or authorized agent may be present at all times. Samples so taken shall be placed in two (2) containers and shall immediately be sealed and the evidence of such sealing indicated thereon by the signature of the representative of the owner or trainer. One (1) part of the sample is to be placed in a depository under the supervision of the presiding judge and/or any other agency the commission may designate to be safeguarded until such time as the report on the chemical analysis of the other portion of the split sample is received.

(2) Should a positive report be received, an owner or trainer shall have the right to have the other portion of the split sample inserted in with a subsequent group being sent

for testing or may demand that it be sent to another chemist for analysis, the cost of which will be paid by the party requesting the test.

Section 3. (1) Whenever there is a positive test finding the presence of any drug, stimulant, sedative or depressant present, in the post-race test, the laboratory shall immediately notify the presiding judge who shall immediately report such findings to the commission.

(2) When a positive report is received from the laboratory by the presiding judge, the persons held responsible shall be notified and a thorough investigation shall be conducted by or on behalf of the judges. A time shall be set by the judges for a hearing to dispose of the matter. The time set for the hearing shall not exceed four (4) racing days after the responsible persons were notified. The hearing may be continued, if in the opinion of the judges, circumstances justify such action.

(3) Should the chemical analysis of saliva, blood, urine or other sample of the post-race test taken from a horse indicate the presence of a forbidden narcotic, stimulant, depressant, or local anesthetic, it shall be considered prima facie evidence that such has been administered to the horse.

(4) Upon receipt of written notification of a positive test finding, the judges shall *not* cause the immediate suspension of the horse from further participation in racing [pending the outcome of a hearing].

Section 4. Any person or persons who shall administer or influence or conspire with any other person or persons to administer to any horse any drug, medicament, stimulant, depressant, narcotic or hypnotic to such horse within forty-eight (48) hours of his race, shall be subject to penalties provided in this rule. *No horse shall be tubbed in ice in the paddock prior to their racing commitment.*

Section 5. Whenever the post-race test or tests prescribed in Section 1 disclose the presence in any horse of any drug, stimulant, depressant or sedative, in any amount whatsoever, it shall be presumed that the same was administered by the person or persons having control and/or care and/or custody of such horse with the intent thereby to affect the speed or condition of such horse and the result of the race in which it participated.

Section 6. A trainer shall be responsible at all times for the condition of all horses trained by him. No trainer shall start a horse or permit a horse in his custody to be started if he knows, or if by the exercise of reasonable care he might have known or have cause to believe, that the horse has received any drug, stimulant, sedative, depressant, medicine or other substance that could result in a positive test. Every trainer must guard or cause to be guarded each horse trained by him in such manner and for such period of time prior to racing the horse so as to prevent any person not employed by or connected with the owner or trainer from administering any drug, stimulant, sedative, depressant, or other substance resulting in a post-race positive test.

Section 7. Any owner, trainer, driver or agent of the owner, having the care, custody and/or control of any horse who shall refuse to submit such horse to a saliva test or other tests as herein provided or ordered by the judges shall be guilty of a violation of this rule. Any horse that refuses to submit to a pre-race blood test shall be required to submit to a post-race saliva and urine test regardless of its finish.

Section 8. Any horse in which an offense was detected

under any section of this rule shall be placed last in the order of finish and all winnings of such horse shall be forfeited and paid over to the commission for redistribution among the remaining horses in the race entitled to same. No such forfeiture and redistribution of winnings shall effect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, when such distribution of pools is made upon the official placing at the conclusion of the heat or dash.

Section 9. Pre-Race Blood Test. Where there is a pre-race blood test which shows that there is an element present in the blood indicative of a stimulant, depressant or any unapproved medicament, the horse shall immediately be scratched from the race and an investigation conducted by the officials to determine if there was a violation of Section 4.

Section 10. Hypodermic Syringe Prohibited. No person except a licensed veterinarian approved by the commission shall have within the grounds of a licensed harness race track in or upon the premises which he occupies, or has a right to occupy, or in his personal property or effects any hypodermic syringe, hypodermic needle, or other devices which can be used for the injection or other infusion into a horse of a drug, stimulant or narcotic. Every licensed harness racing association upon the grounds of which horses are lodged or kept, is required to use all reasonable effort to prevent violation of this rule.

Section 11. (1) All veterinarians practicing on the grounds of an extended pari-mutuel meeting shall keep a log of their activities on a form provided by the commission and shall submit a copy of it to the commission office of the track each day of a race meeting. The log shall include:

- (a) Name of horse;
- (b) Nature of ailment;
- (c) Type of treatment;
- (d) Date and hour of treatment.

(2) It shall be the responsibility of the veterinarian to report to the presiding judge any internal medication given by him by injection or orally to any horse after he has been declared to start in any race.

Section 12. (1) Any veterinarian practicing veterinary medicine on a race track where a race meeting is in progress or any other person using a needle or syringe shall use only one (1) time disposable type needles and a disposable needle shall not be reused. The disposable needles shall be kept in his possession until disposed of by him off the track.

(2) No veterinarian, assistant veterinarian or employee of same shall leave a needle or syringe with anyone on a race track where a race meeting is in progress except upon written authorization from the commission.

Section 13. (1) The commission veterinarian or a practicing veterinarian, licensed by the Kentucky Harness Racing Commission, may prescribe the use of lasix for a bleeder, providing the veterinarian actually sees said horse bleed, *or the horse is scoped by a veterinarian and declared a bleeder. A horse racing on lasix and coming from another state may race on lasix if a certificate of approval from that racing jurisdiction is presented to the Kentucky Harness Racing Commission or the use of lasix is noted on the eligibility papers of the horse.*

(2) The aforementioned horse shall be treated and shall perform in a qualifying race and meet the standards of the meeting before being entered to race again.

(3) A lasix use form (blue) must be submitted to the commission office at the track for approval of the use of lasix.

(4) Each time the horse treated with lasix races, a form (yellow) must be submitted to the commission office at the track.

(5) If a trainer no longer wishes to use lasix, a form (white) must be submitted to the commission office at the track; *and the horse must perform in a qualifying race without lasix and meet the standards of the meeting before being allowed to race without lasix. To be permitted to use lasix again the horse must meet the requirements of subsection (2) of this section.* Said horse may again race on lasix, but must race with lasix the balance of the meeting.

(6) Horses racing on lasix at one (1) meeting in Kentucky and racing at another meeting in Kentucky need not qualify, but will have to submit the necessary forms to the commission office.

(7) It is the responsibility of the trainer to submit all necessary forms.

(8) The horse may be treated with lasix orally or systemically.

(9) Lasix found in the chemical test of a horse not registered to race with lasix shall be judged a positive.

Section 14. The penalty for violation of any sections of this rule, unless otherwise provided, shall be a fine of not to exceed \$5,000, suspension for a fixed or indeterminate time, or both; or expulsion.

CARL B. LARSEN, Supervisor of Racing
MELVIN WILSON, Secretary

APPROVED BY AGENCY: June 22, 1984

FILED WITH LRC: July 25, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on this regulation on September 21, 1984, at 1:30 p.m., at 1051-H Newtown Pike, Lexington, Kentucky. Anyone interested in attending this hearing shall notify in writing Carl B. Larsen, Supervisor of Racing, Kentucky Harness Racing Commission, 1051-H Newtown Pike, Lexington, Kentucky 40511-1278, at least five days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen, Supervisor of Racing

(1) Type and number of entities affected: Horsemen and track personnel.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Eliminates duplication of qualifying races.

(5) Identify any statute, administrative regulation or

government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. Regulation affects all horsemen.

**PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Harness Racing Commission
(Proposed Amendment)**

811 KAR 1:105. Review and appeal.

RELATES TO: KRS 230.630(1),(3), 230.640, 230.720, 230.730

PURSUANT TO: KRS [13.082,] 230.630(3),(4),(7)

NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to regulate reviews and appeals of the Commission and the Franklin Circuit Court.

Section 1. (1) If any person, licensee or association be aggrieved of any order or revocation, suspension, exclusion, ruling off, fine or other decision on ruling of the judges, such person, licensee by filing a written appeal with the commission not later than five (5) days after such ruling or decision is made. *If a ruling is in regard to a violation that occurred during the race, the written appeal must be filed before the winnings are paid over. Appeals resulting from rulings at Fairs shall be filed within five (5) days of a ruling.*

(2) An appeal shall be addressed to the commission at its principal office and shall:

(a) Set forth the decision or ruling of the judges complained of the date when same was rendered; and

(b) Request a specification of charges and review by the commission of the charges upon which the action of the judges is based.

Section 2. (1) If the chairman of the commission or deputy commissioner (supervisor of racing) has information that any licensee or other person has secured his license based on false or fraudulent statements or has violated any rules of the commission or the provisions of the Kentucky Revised Statutes, he shall have the authority to revoke or suspend the license of such licensee or other person; provided, however, that such licensee or other person may have a review of such action by filing a written appeal with the commission not later than ten (10) days after such action is taken.

(2) The appeal shall be addressed to the commission at its principal office and shall:

(a) Set forth the decision, ruling or action of the chairman or deputy commissioner (supervisor of racing) complained of and the date when same was rendered; and

(b) Request a specification of charges and review by the commission of the charges upon which the action of the chairman or deputy commissioner (supervisor of racing) was based.

Section 3. If the commission is of the opinion that any association, licensee or other person has violated any rules of the commission or the provisions of the Kentucky Revised

Statutes, it shall have the authority to issue a citation against such association, licensee or other person directing him to appear and show cause why his license should not be suspended or revoked or he not be ruled off or fined in an amount commensurate with the offense. Such citation shall contain the following:

(1) The rule or rules, or statute, alleged to have been violated and the time and place where such violation occurred;

(2) The acts committed by the offending party upon which said violations are based; and

(3) A full statement of charges preferred against the offending party.

Section 4. Notice of any commission hearing held under Sections 1, 2, and 3 or in any other instance, shall be served upon the offending or aggrieved party by registered mail directed to the last known address of such party. Such notice shall be in writing, shall fix the time and place of hearing and shall be issued and mailed not less than five (5) nor more than thirty (30) days before the date of such hearing.

Section 5. If notice is issued under Section 1, the same shall also contain a specification of the charges upon which the ruling or decision of the judges was based; or if issued under Sections 2 or 3, such notice shall set forth the information required thereunder.

Section 6. In all hearings before the commission, the chairman of the commission shall preside and shall determine the competence and order of the introductions of evidence. A hearing officer may be appointed by the chairman who shall cause a transcript of the testimony and his recommendations, to be filed with the commission for action by the commission. The aggrieved party shall have the right to appear in person and by counsel. At the conclusion of the hearing the commission shall take the case under advisement and shall, as promptly as may be reasonably possible, make known its decision, and should the order or decision of the judges, chairman of the commission or deputy commissioner (supervisor of racing) be sustained, the secretary of the commission (executive racing secretary) shall at once notify the aggrieved party of the commission's decision. In the event the commission finds that the aggrieved party was not guilty or any infraction or violation, the action of the judges shall be set aside and revoked, and the aggrieved party so notified.

Section 7. Stay of Enforcement. In the event a penalty is imposed by the officials, the chairman of the commission, the commission or the deputy commissioner (supervisor of racing) or his assistants may grant a stay of the enforcement of such penalty until an appeal, if filed, is decided. In certain circumstances described below, the commission will grant a stay pending appeal to any person licensed by it who is affected by any decision of, or penalty imposed by an official or officials at a race meeting.

(1) Such a stay will be available in cases involving the loss of purse money of \$100 or more, or a fine of \$100 or more, or suspension of driving, or expulsion from the paddock or race track grounds of more than five (5) days.

(2) The stay will begin when the person appealing files a "notice of appeal" and requests a stay on a form provided by the commission and security of not less than \$100, or as follows:

(a) A filing shall be made at the commission's office, Lexington, Kentucky, or with its representative at the operating track within forty-eight (48) hours after the decision or penalty from which the appeal is taken.

(b) The "notice of appeal" and "request for stay" shall be sworn to and shall state the grounds for appeal.

(c) The security is \$100 unless the commission sets a higher security within forty-eight (48) hours of the filing. If a higher security is set, the stay will automatically terminate unless the excess over the \$100 is posted within twenty-four (24) hours of the notice of the higher security and has been received by the person appealing.

(d) Failure to sustain the appeal may cause forfeiture of the security and if the costs of said appeal exceed the amount of the security, the additional costs shall be paid upon order of the commission.

(3) The commission reserves the right to hold as forfeit all or any part of the posted security if, in its considered opinion, the appeal was frivolous or without foundation.

Section 8. Witnesses for hearings may be subpoenaed by the chairman, vice-chairman, deputy commissioner (supervisor of racing) or hearing officer.

Section 9. All actions of the commission may be appealed to the Franklin Circuit Court by an aggrieved party within thirty (30) days pursuant to the Rules of Civil Procedure. No injunction or restraining order shall issue pending said appeal.

CARL B. LARSEN, Supervisor of Racing
MELVIN WILSON, Secretary

APPROVED BY AGENCY: June 22, 1984

FILED WITH LRC: July 25, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on this regulation on September 21, 1984, at 1:30 p.m., at 1051-H Newtown Pike, Lexington, Kentucky. Anyone interested in attending this hearing shall notify in writing Carl B. Larsen, Supervisor of Racing, Kentucky Harness Racing Commission, 1051-H Newtown Pike, Lexington, Kentucky 40511-1278, at least five days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen, Supervisor of Racing

(1) Type and number of entities affected: Horsemen.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: 10 day period was too long for effective administration of appeals and purses.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable

(b) If in conflict, was effort made to harmonize the pro-

posed administrative regulation with conflicting provisions: Not applicable

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. Regulation affects all horsemen.

PUBLIC PROTECTION AND REGULATION CABINET Kentucky Harness Racing Commission

811 KAR 1:150. Officials; deputies and assistants.

RELATES TO: KRS 230.620(4), 230.630(1),(2),(3), 230.640, 230.650, 230.660

PURSUANT TO: KRS 13.082, 230.630(3),(4),(7)

NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to set out the duties and responsibilities of commission officials, deputies and assistants.

Section 1. Executive Racing Secretary. *The Governor shall appoint a secretary for the commission for a term of four (4) years. The secretary shall receive an annual salary fixed by the commission and shall perform such duties as prescribed by the commission.* [The executive racing secretary is appointed by the Governor and shall be responsible for the keeping of the minutes of the commission and shall be the official custodian of all records of the commission. The executive racing secretary shall manage the office of the commission and shall supervise office personnel, exclusive of the deputy commissioner (supervisor of racing) and assistant deputy commissioner (assistant supervisor of racing) and shall supervise licensing from the office of the commission and shall perform such other duties as shall be designated by the commission.]

Section 2. Deputy Commissioner (Supervisor of Racing). A deputy commissioner (supervisor of racing) may be appointed by the commission and shall be representative at large of the commission. He shall have general supervision over all race officials and licensees of the commission. He shall supervise the licensing of all those persons required to be licensed by the commission at associations. He shall generally supervise the conduct of the racing, the pari-mutuel operations, and the testing of horses. His authority is extended to cover all powers and duties of the commission, subject to review by the commission, except for such limitations expressly stated in the law or the commission's regulations. He shall have authority to conduct inquiries, and shall submit a report of all proceedings thereon to the commission. He shall at all times have access to all parts of the course, plant and grounds, including the pari-mutuel department. The compensation of the deputy commissioner (supervisor of racing) shall be fixed by the commission and paid by the commission or other branches of state government. The commission in its discretion may appoint such assistants to the deputy commissioner (supervisor of racing) as it may deem necessary who shall have the same authority as the deputy commissioner (supervisor of racing) in his absence but such assistant shall be junior in authority to the deputy commissioner (supervisor of racing) at all times. In addition, the commission may appoint any other assistants as it may deem necessary.

Section 3. The commission may, in its discretion, designate one (1) of the officials as its representative at that particular meeting. Said designee shall be required to perform all of the functions of a deputy commissioner (supervisor of racing).

Section 4. It shall be the duty of all the officials to enforce the rules and regulations of the commission.

Section 5. The deputy commissioner (supervisor of racing) or any official or employee appointed or approved by the commission may be removed by the commission in its discretion. The chairman, or in his absence from the state, the vice-chairman, may suspend the deputy commissioner (supervisor of racing) or any official or employee appointed or approved by the commission until such time as the commission may act to remove or reinstate said deputy commissioner (supervisor of racing), official, or employee.

Section 6. In an emergency, due to incapacity or absence, the deputy commissioner (supervisor of racing) or in his absence, the licensee may appoint a substitute official to serve pending a new official approved by the commission.

Section 7. Commission Director of Security. The commission may employ an investigator experienced in police work who shall advise the commission as to any person on association grounds, or among license applicants, whose conduct or reputation is such that such person's presence on association grounds may reflect on the honesty and integrity of standardbred racing or interfere with the orderly conduct of standardbred racing. The commission director of security shall:

(1) Maintain a current file on persons against whom rulings have been issued in racing jurisdictions and reported through the National Association of State Racing Commissioners and the United States Trotting Association. Said file also shall contain reports received from all available agencies as to investigations, arrest records, and other information; said file also shall contain reports as to ejections or exclusions from association grounds in Kentucky and other racing jurisdictions.

(2) Investigate and ascertain the truth of statements made on license applications.

(3) Investigate possible infractions of racing rules at the request of the commission or stewards.

(4) Participate and cooperate with members of the track security police, state and local police on all other investigations and conduct pertaining to racing in the Commonwealth.

Section 8. Commission Supervisors of Pari-Mutuel Betting. (1) The commission shall employ supervisors of pari-mutuel betting with accounting experience who shall be responsible for ascertaining whether the proper amounts have been paid from pari-mutuel pools to the betting public, to the association, and to the commonwealth, by checking, auditing, and filing with the commission verified reports accounting for daily pari-mutuel handle distribution and attendance for each preceding racing day and a final report at the conclusion of each race meeting in the Commonwealth.

(2) Such daily reports to the commission shall show: For each race: number of horses started, number of betting interests, total money wagered in each betting pool, and refunds, if any for each day. The sum of all betting pools, and total refunds also, total pari-mutuel handle for the comparable racing day for the preceding year, and cumulative total and daily average pari-mutuel handle for the race meeting.

(3) Such daily reports also shall show: amount of state pari-mutuel tax due; taxable admissions, tax exempt admissions, total admissions; temperature, weather and track conditions, post time of first race; program purses,

distance and conditions of each race; any minus pools resulting with explanation.

(4) The commission supervisors of pari-mutuel betting shall submit to the commission on or before thirty (30) days after the close of each race meeting a final verified report giving in summary form a recapitulation of the daily reports for each race meeting and such other information as the commission may require.

(5) The commission supervisors of pari-mutuel betting or their representatives shall have access to all association books, records, and pari-mutuel equipment for checking accuracy of same.

Section 9. The commission, its executive racing secretary, representatives, officials and employees shall at all times have full access to the course, plant and grounds, including the judges' stand, and pari-mutuel department.

Section 10. Commission Veterinarian. (1) The commission shall employ a graduate veterinarian licensed in Kentucky and experienced in equine medicine. He shall advise the commission and the judges on all equine veterinary matters. The commission veterinarian shall supervise and control the test barn area, supervise the collection of samples for the testing of horses for prohibited medication described in 811 KAR 1:090. The commission veterinarian shall also inspect horses programmed to race that may be lame, sick, or too weak to race.

(2) No veterinarians designed as officials at any race meeting shall practice their profession upon the grounds at such race meeting, except, however, such veterinarian may act in case of an emergency, and only for so long as such emergency may exist; nor shall he buy or sell, for himself or another any horse under his supervision; nor shall he wager on a race under his supervision.

Section 11. Commission Chemist. (1) The commission is authorized to employ a graduate chemist experienced in chemical testing techniques who shall be responsible for conducting tests on urine, saliva and blood specimens from standardbreds delivered to him by the commission veterinarian or any other person so authorized by the commission, and shall be responsible for conducting any other tests requested or required by the commission. The commission chemist is authorized on behalf of the commission, to acquire, operate and maintain, or to provide by contract approved by the commission, a chemical testing laboratory and related facilities.

(2) The commission chemist shall report to the presiding judge and the deputy commissioner all substances he may find in the chemical tests which are not normal in the body of the horse as outlined in 811 KAR 1:090.

Section 12. Director, Standardbred Development Fund. (1) A director shall be appointed by the Kentucky Harness Racing Commission to supervise the registration of horses for entry into races provided by the Kentucky Standardbred Development Fund. He shall assist the agency head and commissioners in the development and enforcement of policies, regulations and operational methods of the Kentucky Standardbred Development Fund. He shall be the liaison between breeders, horsemen, and track managers as to the scheduling of sire stakes events. The director shall supervise one (1) employee, an administrative specialist, and review all statistical charts and reports of purses and contributions from the mutuel handle that concern the fund. He shall supervise all advertising in the major horse publications regarding race dates, registered sires in Kentucky and nominating dates.

(2) The compensation of the director shall be fixed by the commission. The compensation shall be paid out of the Kentucky Standardbred Development Fund.

CARL B. LARSEN, Supervisor of Racing
MELVIN WILSON, Secretary

APPROVED BY AGENCY: April 6, 1984

FILED WITH LRC: July 25, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on this regulation on September 21, 1984, at 1:30 p.m., at 1051-H Newtown Pike, Lexington, Kentucky. Anyone interested in attending this hearing shall notify in writing Carl B. Larsen, Supervisor of Racing, Kentucky Harness Racing Commission, 1051-H Newtown Pike, Lexington, Kentucky 40511-1278, at least five days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen, Supervisor of Racing

(1) Type and number of entities affected: Affects no licensee.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Leaves duties up to Commission

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Wants to be able to expand and narrow duties.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable

(6) Any additional information or comments: Not applicable.

Tiering:

Was tiering applied? Regulation affects only employees of the Commission.

CABINET FOR HUMAN RESOURCES Department for Health Services Certificate of Need and Licensure Board (Proposed Amendment)

902 KAR 20:006. Certificate of need process.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

PURSUANT TO: KRS 13.082, 216B.040, 216B.075

NECESSITY AND FUNCTION: KRS 216B.040 and KRS 216B.075 authorize the Certificate of Need and Licensure

Board to promulgate administrative regulations respecting application and review procedures. This regulation sets forth the application and review procedures and requirements for batching, review of substantial changes in projects and cost escalations and progress reports.

Section 1. Definitions. Except as otherwise provided, for purposes of this regulation, the following definitions shall apply:

(1) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provides services similar to the services of the facility under review; health facilities which, prior to receipt by the agency or the proposal being reviewed, have formally indicated an intention to provide similar services in the future; the cabinet and third party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located.

(2) "Batching" means the formal review in the same review cycle and comparative consideration of all filed applications (other than those given non-substantive review pursuant to KRS 216B.095) pertaining to similar types of services, facilities or equipment affecting the same health service area.

(3) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(4) "Capital expenditure authorized" means the amount of the capital expenditure approved by the board to implement a proposal.

(5) "Certificate of need" means an authorization by the board to proceed to acquire, to establish, to offer, to substantially change the bed capacity or to substantially change a health service as covered by KRS Chapter 216B.

(6) "Cabinet" means the Cabinet for Human Resources.

(7) "Executive director" means the executive director of the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(8) "Formal review process" means the ninety (90) day certificate of need review conducted by the board.

(9) "Health service" means clinically related services provided within the Commonwealth to two (2) or more persons, including but not limited to diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services.

(10) "Local health planning agency" means a health planning agency organized for a particular geographical area of the Commonwealth and designated by the governor.

(11) "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095.

(12) "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record.

(13) "Public information channels" means the office of communications and council affairs in the Cabinet for Human Resources.

Section 2. Criteria. In determining whether to issue or deny a certificate of need, the board and the cabinet shall utilize the following criteria:

(1) Consistency with plans. The proposal should be consistent with the state health plan. Consideration should be

given to the other applicable appropriately adopted plans developed by local health planning agencies. In case of inconsistency between the state health plan and other plans considered, the state health plan shall prevail. The fact that the state health plan does not address the specific type of proposal being reviewed does not constitute grounds for disapproval of the proposal. To determine conformance with this criterion the applicant and the cabinet shall address and the board shall consider the relationship of the proposal to:

- (a) The state health plan;
- (b) The applicable appropriately adopted plans developed by local health planning agencies.

(2) Need and accessibility. The proposal should meet an identified need in a defined geographic area and be accessible to all residents of the area. To determine conformance with this criterion the applicant shall address and the board and the cabinet shall consider:

(a) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons and other underserved groups are likely to have access to those services.

(b) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service; the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements; and the effect of the reduction, elimination, or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups to obtain needed health care.

(c) The contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women and handicapped persons), particularly those needs identified in the applicable appropriately adopted plans developed by local health planning agencies and the state health plan as deserving of priority. In this regard, the board and the cabinet shall consider:

1. The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations will use the proposed services if approved;

2. The past performance of the applicant in meeting its obligation, if any, under any applicable federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal financial assistance (including the existence of any civil rights access complaints against the applicant);

3. The extent to which physicians with admitting privileges at the applicant's facility admit Medicare and Medicaid patients; and

4. The extent to which the applicant offers alternative means, other than through admission by a physician, by which a person will have access to its services (e.g., admission through a clinic or emergency room).

(d) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

(e) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.

(f) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. These entities may include medical or other health professions schools, multidisciplinary clinics and specialty centers.

(g) The special needs and circumstances of biomedical-behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

(3) Interrelationships and linkages. The proposal should serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state accompanied by assurance of effort to achieve comprehensive care, proper utilization of services and efficient functioning of the health care system. To determine conformance with this criterion the applicant shall address and the board and the cabinet shall consider:

(a) The relationship of the services to be provided to the existing health care system of the area in which the services are proposed to be provided.

(b) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

(c) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

(4) Costs, economic feasibility, and resource availability. The proposal when measured against the cost of alternatives for meeting needs, is judged to be an effective and economical use of resources, not only in terms of capital investment, but also in terms of ongoing requirements for health manpower and operational financing. To determine conformance with this criterion the applicant shall address and the board and the cabinet shall consider:

(a) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated, or eliminated.

(b) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the cost of and charges for providing health services by the person proposing the service.

(c) The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of these resources for the provision of other health services.

(d) In the case of construction projects:

1. The costs and methods of the proposed construction, including the costs and methods of energy provision; and

2. The probable impact of the construction project reviewed on the costs of providing health services by the persons proposing the construction project and on the costs and charges to the public of providing health services by other persons.

(e) The special circumstances of health care facilities with respect to the need for conserving energy.

(f) The factors which affect the effect of competition on the supply of the health services being reviewed.

(g) Improvements or innovations in the financing and delivery of health services which foster competition, and serve to promote quality assurance and cost effectiveness.

(5) Quality of services. The applicant should be prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements assuring the provision of quality health care services. To determine conformance with this criterion the applicant shall address and the board and the cabinet shall consider the quality of care provided by the applicant in the past.

(6) Special needs and circumstances of health maintenance organizations. In the case of a health maintenance organization (HMO) or an ambulatory care facility or health care facility controlled directly or indirectly by an HMO, the proposal should be consistent with the special need and circumstances of HMOs. The applicant shall address and the board and the cabinet shall consider only:

(a) The needs of enrolled members and reasonably anticipated new members of the health maintenance organizations for the health services proposed to be provided by the organization; and

(b) The availability of the new health services from non-health maintenance organization providers or other health maintenance organizations in a reasonable and cost effective manner which is consistent with the basic method of operation of the health maintenance organization. In assessing the availability of these health services the board and the cabinet shall consider only whether the services from these providers:

1. Would be available under a contract of at least five (5) years duration;

2. Would be available and conveniently accessible through physicians and other health professionals associated with the health maintenance organization (e.g., whether physicians associated with the health maintenance organization have or will have full staff privileges in a non-health maintenance organization hospital.);

3. Would cost no more than if the services were provided by the health maintenance organization; and

4. Would be available in a manner which is administratively feasible to the health maintenance organization.

Section 3. Required Approvals for HMOs. Notwithstanding the general review criteria established in Section 2, if an HMO or a health facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the board shall approve the application if it finds, in accordance with the criterion set out in Section 2(6) that:

(1) Approval of the application is required to meet the needs of the members of the HMO and the new members which the HMO can reasonably be expected to enroll; and

(2) The HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operations of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it.

Section 4. Exemptions. (1) A certificate of need shall not be required for any project which meets the applicable requirements of KRS 216B.065, 216B.070, or Section 14 of the 1982 Act. If a person acquires major medical equipment not located in a health facility without a certificate of need and proposes at any time to use that equipment to serve inpatients of a hospital, the proposed new use must be reviewed unless the equipment will be used to provide

services to inpatients of a hospital only on a temporary basis in the case of an emergency, a natural disaster, a major accident, or an equipment failure. For the purposes of this section "temporary basis" means on an occasional and irregular basis or until the applicant's proposal for permanent acquisition or regular use by a hospital is reviewed under the formal or non-substantive review process.

Section 5. Formal Review. (1) At least thirty (30) days prior to submitting a certificate of need application for a construction project, a letter of intent shall be filed with the executive director. No letter of intent is required when an applicant proposes to alter an outstanding certificate of need for a construction project. The letter of intent shall be filed on a form provided by the board.

(2) A letter of intent is valid for a period of one (1) year.

(3) The executive director shall acknowledge receipt of the letter of intent, send a copy to the respective local health planning agency, if any, and send appropriate forms and instruction sheets to the applicant.

(4) The original certificate of need application and one (1) copy shall be submitted to the executive director and two (2) copies shall be submitted to the respective local health planning agency, if any.

(5) Within fifteen (15) days of receipt of the application the executive director shall acknowledge receipt in writing to the applicant and the respective local health planning systems agency, if any, and shall notify the applicant whether or not the application is complete.

(6) If the application is not complete, the notice to the applicant shall give the applicant the option of submitting the additional information or of notifying the executive director that he elects for the application to be processed as originally submitted.

(7) All applications shall be deemed filed upon the determination of completeness by the executive director, upon receipt of the requested additional information by the executive director, or upon receipt of a letter from the applicant stating that he elects for the application to be processed as originally submitted.

(8) Applications not filed within a year from the date the application was received shall not be retained by the board.

(9) The executive director shall notify the applicant of the date the application was filed and the date public notice has been given of the commencement of the review process. Applications must be filed at least six (6) working days prior to the date of public notice in order to be included in such notice.

(10) The executive director shall give written notice to affected persons of the beginning of a review. The notice shall include the schedule for the review and the period within which a public hearing may be requested by affected persons. The review notice to members of the public and third party payors shall be provided through public information channels. Notice to all other affected persons shall be by mail.

(11) The review period shall commence on the date of public notice. No review shall take longer than ninety (90) days from the commencement of the review unless the applicant agrees to a deferral of action. Applications proposing the same or similar types of services, equipment, or facilities affecting the same health service area shall be batched in the review cycles so they can be given comparative review, if applicable. Batching review cycles for formal reviews shall be as follows:

Type of Proposal	Month of public notice, ninety (90) days prior to meeting date	Month of certificate of need board meeting, third Wednesday of:
(a) Hospital facilities and services including: general medical, surgical, psychiatric, obstetric and pediatric beds; primary care centers, renal disease facilities, and ambulatory care clinics, ambulatory surgical centers, and rural health clinics.	October, February, June	January, May, September
(b) Long term care facilities and services including: skilled nursing, intermediate care, personal care, and nursing homes; and proposals for home health services, and any other type of proposal not listed in paragraph (a) of this subsection.	December, April, August	March, July, November

(12) Any person directly affected by the proposal may request a public hearing within thirty (30) days of the date of public notice.

(13) The local health planning agency shall notify the executive director of its recommendation for approval or disapproval within sixty (60) days from the date of public notice. The recommendation shall set forth the basis for the recommendation and findings with respect to the criteria. In the event that no recommendation is received from the local health planning agency, the board shall proceed without a recommendation.

(14) The executive director of the board shall notify the applicant, the local health planning agency and any party to the proceeding of the board's final action on a certificate of need application.

(a) If the application is approved, the written notification shall include:

1. Verification that criteria for determining need have been met and that the current accessibility of the facility as a whole has been taken into account, if applicable, as specified in the federal certificate of need regulation, except in the following cases:

a. Where the application is approved pursuant to the requirements of Section 2(6). In such case, the written findings shall verify that the conditions for required approvals under Section 3 have been met; or

b. Where the project is a proposed capital expenditure not directly related to the provision of health services or to beds or major medical equipment.

2. Amount of capital expenditure authorized, where applicable.

(b) If the application is disapproved, the written notification shall include:

1. The decision of the board.

2. Notice of appeal rights.

(c) If the board's action on a certificate of need application is inconsistent with a recommendation made by the local health planning agency, the executive director shall submit to the local health planning agency and to the applicant a written detailed statement of the reasons for the inconsistency.

Section 6. Nonsubstantive Review. (1) An applicant may waive the procedures for formal review of an application for a certificate of need and request a nonsubstantive review. In addition to the projects specified in KRS 216B.095(3)(a through f), nonsubstantive review status will be granted to: [an]

(a) Applications to change the location of a proposed health service, so long as the application to change the location is submitted no later than one (1) year after the issuance of the original certificate of need. If a change of location of a proposed health facility is requested more than one (1) year after the certificate of need was issued, a formal review shall be required; and

(b) Applications pertaining to ambulance services, air ambulance services and non-emergency health transportation services until an emergency medical services component is adopted as part of the state health plan.

(2) Procedures. Procedures for nonsubstantive review shall be as follows:

(a) The original certificate of need application and one (1) copy, with a request for nonsubstantive review shall be submitted to the executive director and two (2) copies of the application shall be submitted to the respective local health planning agency, if any.

(b) Within fifteen (15) days of the receipt of the application the executive director shall acknowledge receipt of the application in writing to the applicant and the local health planning agency, if any, and shall notify the applicant whether or not the application is complete.

(c) If the application is not complete, the notice to the applicant shall give the applicant the option of submitting the additional information or of notifying the executive director that he elects for the application to be processed as originally submitted.

(d) All applications shall be deemed filed upon the determination of completeness by the executive director, upon receipt of the requested additional information by the executive director, or upon receipt of a letter from the applicant that he elects for the application to be processed as originally submitted.

(e) Within fifteen (15) days after the application is filed, the executive director functioning as the representative of the cabinet shall determine whether the application meets the criteria for nonsubstantive review and shall notify affected persons of the decision to grant or deny nonsubstantive review status. The notice to members of the public and third party payors shall be provided through public information channels. Notice to all other affected persons shall be by mail.

(f) Within fifteen (15) days of the cabinet's notice to conduct a nonsubstantive review any affected person other than the applicant may request a public hearing before the cabinet on an application granted nonsubstantive review status.

(g) The local health planning agency, if any, shall recommend approval or disapproval of applications granted nonsubstantive review status within thirty (30) days of the date of public notice. In the event that no recommendation is received from the local health planning agency, the cabinet shall proceed without a recommendation.

(h) The cabinet shall approve or disapprove applications for certificates of need within forty-five (45) days from the date of public notice to conduct a nonsubstantive review.

(i) If the applicant's proposed project is denied nonsubstantive review status the application will automatically be placed in the next appropriate batching cycle of the formal review process.

(j) If a certificate of need is denied following a non-

substantive review, the applicant may request that the application be placed in the next appropriate batching cycle of the formal review process or may pursue a judicial appeal. If a formal review is requested, no letter of intent shall be required, but the filing of the request for non-substantive review shall be considered compliance with any requirement for a letter of intent.

Section 7. Conditions Relative to a Certificate of Need.

(1) No person shall transfer an approved certificate of need for the establishment of a new health facility or the replacement of an existing facility without first obtaining a certificate of need. All other certificates of need may be transferred to the new owner of the facility or service if a change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) A certificate of need issued for establishment of a new health facility or the replacement of an existing facility and is issued only for the location stated on the certificate.

(3) Cost escalations. (a) A certificate of need shall not be required for an escalation of the capital expenditure authorized provided that the scope of the project as approved is not altered and the amount of the escalation does not exceed:

1. Twenty percent (20%) of the capital expenditure authorized or \$100,000, whichever is greater, in the case of projects with a capital expenditure of less than \$500,000;

2. Twenty percent (20%) of the capital expenditure authorized, in the case of projects with a capital expenditure of \$500,000 or greater, but less than \$5,000,000;

3. Ten percent (10%) of the amount in excess of \$5,000,000, plus \$1,000,000, in the case of projects with a capital expenditure of \$5,000,000 or greater, but less than \$25,000,000;

4. Five percent (5%) of the amount in excess of \$25,000,000, plus \$3,000,000, in the case of projects with a capital expenditure of \$25,000,000 or greater, but less than \$50,000,000; or

5. Two percent (2%) of the amount in excess of \$50,000,000, plus \$4,250,000 in the case of projects with a capital expenditure of \$50,000,000 or greater.

(b) The certificate of need holder shall submit, to the executive director, a standardized escalation form approved by the Board which includes the amount of the escalation, the factors pertaining to the escalation, and information to assure that the scope of the project as approved originally by the Board has not changed. The executive director shall review the form submitted and within thirty (30) days of receipt shall notify the certificate of need holder whether the proposed escalation meets the requirements of subsection (a) of this section. Capital expenditures for escalations within the limits prescribed in this section shall not be obligated until the certificate of need holder has received this notice. A certificate of need shall be required for escalations in the capital expenditure authorized which exceeds the limits prescribed in this section or entails a change in the scope of the proposal which was originally approved.

(c) The certificate of need holder shall, prior to obligating any escalation of the capital expenditure authorized, submit to the executive director any additional certificate of need application fee required by the increased capital expenditure pursuant to the requirements of 902 KAR 20:135.

Section 8. Progress Reports. (1) As one of the condi-

tions of a certificate of need, the certificate of need holder shall submit a report of progress every six (6) months or more frequently if required by the board until the project is complete.

(2) All certificate of need holders shall be notified in writing that certificates of need will be revoked by the board if satisfactory evidence towards the implementation of a proposal is not made within the time limits set by this regulation. The applicant shall provide the necessary evidence on forms provided by the executive director. The board may revoke the certificate of need for failure to submit progress reports as required.

(3) Procedures for submission of progress reports:

(a) The executive director shall send notice to the certificate of need holder specifying the date each progress report is due. The first six-month report shall be due six (6) months from the date the certificate was issued.

(b) The applicant shall send one (1) copy of the six-month progress report form to the board and two (2) copies to the local health planning agency, if any.

(4) Criteria for review of progress:

(a) The first six-month progress report shall include the following:

1. On all projects for purchase of equipment only, a copy of the purchase order.

2. For all construction projects, a copy of the deed or the option to acquire the site.

(b) In the event the certificate of need holder wishes to change the location of the project from the site specified on the certificate of need, the certificate of need holder shall note the proposed change of location on the first progress report form and shall submit a certificate of need application for nonsubstantive review.

(c) Within one (1) year after a certificate of need is issued, the second six-month report shall include documentation that:

1. All projects for conversion of beds are complete (ready for licensure);

2. All projects for addition of new services, not involving construction, are complete;

3. Schematic plans have been submitted to the Department of Housing, Buildings and Construction and the Cabinet for Human Resources for construction projects. The second six-month report for all construction projects shall also include:

- a. Schedule for project completion with projected dates;

- b. Evidence of preliminary negotiation with financial agent;

- c. Evidence of preliminary negotiation with contractors.

(d) Within eighteen (18) months after a certificate of need has been issued, the third six-month report shall include the following information regarding all construction projects:

1. Copy of deed or lease of land;

2. Evidence that applicant has sufficient capital obligated to complete the project. If the source of capital is to be a financing agreement, the applicant must have evidence that a final enforceable agreement or note has been executed;

3. Documentation that final plans have been submitted to the Department of Housing, Buildings and Construction and the Cabinet for Human Resources;

4. Enforceable contract with construction contractor;

(e) On all projects for purchase of equipment only, evidence that equipment has been installed.

(f) Within two (2) years after a certificate of need has been issued, the fourth six-month report shall verify that

all construction projects have the walls and roof up and plumbing roughed in.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: July 31, 1984

FILED WITH LRC: August 9, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the auditorium of the Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify the following office in writing by September 16, 1984: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther

(1) Type and number of entities affected: Existing and new providers of emergency (conforming), air ambulance and non-emergency health transportation services. There are currently approximately 245 such services licensed.

(a) Direct and indirect costs or savings to those affected:

1. First year: This amendment will allow certificate of need applications for ambulance services to be processed in 2 to 3 months rather than 4 to 8 months under the formal review process.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: This amendment will not result in any additional reports required. No new requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be minor cost savings for copying and postage since materials will not be mailed to the Certificate of Need Board. The Cabinet would have the responsibility to approve or disapprove these applications.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Paperwork requirements will remain essentially the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative was to do CON reviews for these services under the formal review process. This would have resulted in lengthy delays for new services being established.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? Yes. In a sense this is a form of tiering since it will allow ambulance providers to get through the CON process quicker than other new health services.

CABINET FOR HUMAN RESOURCES Department for Health Services Certificate of Need and Licensure Board (Proposed Amendment)

902 KAR 20:008. Health facilities and health service; licensure procedures and fee schedule.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1),(2)

PURSUANT TO: KRS 13.082, 216B.040, 216B.105

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the requirements for obtaining a license to operate a health facility and establishes the fee schedule for a license.

Section 1. Definitions. "Volunteer service" means an ambulance service in which none of the drivers or attendants receive any compensation for their work.

Section 2. Licenses. (1) No person shall operate any health facility in this Commonwealth without first obtaining the appropriate license therefor.

(2) The license shall be conspicuously posted in a public area of the facility.

(3) All applications for licensure shall be filed with the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

(4) All applicants for licenses shall, as a condition precedent to licensure or relicensure, be in compliance with the applicable regulations relating to the particular health facility. Compliance with the board's regulations shall be ascertained through on-site inspections of the health facility by members of the board or their authorized representatives. Any regulatory violation identified during such inspections will be transmitted in writing to the health facility by the inspecting agency. The health facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days. Such plan shall specify the date(s) by which each of the violations will be corrected. Following a review of the plan, the inspecting agency shall notify the health facility in writing of the acceptability of the plan. In instances where a portion or all of the plan is unacceptable, the inspecting agency shall specify the reasons for the unacceptability. In such cases, the health facility shall modify or amend the plan and resubmit it to the inspecting agency within ten (10) days.

(5) All licensees shall, as a condition of licensure or relicensure, be in compliance with the following reporting requirements. All licensees shall have submitted completed routine reports (e.g., annual and semi-annual reports) and any special reports required by the board concerning health services provided, health manpower employed or, utilization of health services within forty-five (45) days of the date the request is mailed. Licensees shall be notified of the content of routine (e.g., annual and semi-annual reports) reports at least forty-five (45) days in advance of the requests.

(6) [(5)] Unannounced inspections shall be conducted on complaint allegations. Such inspections shall be conducted utilizing the procedures outlined under subsection (4) of this section.

(7) [(6)] All licenses shall expire on December 31 following the date of issuance unless otherwise expressly provided in the license certificate.

(8) [(7)] Licenses may be renewed upon [:
 (a)] payment of the prescribed fee and [;
 (b)] compliance with the applicable provisions of the
 Certificate of Need and Licensure Board's regulations. [;
 and]

[(c)] Submission of reports including health services provided, health manpower employed and utilization of health services and any special reports required by the Board. Commencing with the required reports for calendar year 1982, the data elements to be included in said reports will be circulated for notification at least sixty (60) days in advance of the requests.]

(9) [(8)] Each license to operate shall be issued only for the person or persons and premises, including the number of beds (if applicable), named in the application and shall not be transferable. A new application shall be filed in the event of change of ownership. A change of ownership for licenses shall be deemed to occur when more than fifty percent (50%) of an existing facility or capital stock or voting rights of a corporation is purchased, leased or acquired by comparable arrangement by one (1) person from another.

(10) [(9)] Upon the filing of a new application for a license because of change of ownership, the new license shall be automatically issued for the remainder of the current licensure period. No additional fee will be charged for the remainder of the licensure period.

(11) [(10)] There shall be full disclosure to the licensure board of the name and address (and any changes) of:

(a) Each person having (directly or indirectly) ownership interest of ten (10) percent or more in the facility;

(b) Each officer and director of the corporation, where a facility is organized as a corporation; and

(c) Each partner, where a facility is organized as a partnership.

Section 3. Fee Schedule. (1) Fees for review of plans and specifications for construction of health facilities shall be as follows:

License Type	Rate
(a) Hospitals plans and specifications review (initial through final)	\$.025 per sq. ft. \$1,500 maximum
(b) All other health facilities plans and specifications review (initial through final)	\$.025 per sq. ft. \$800 maximum

(2) Annual fees. The annual licensure fee (including renewals) for health services shall be as follows:

License Type	Rate
(a) Air ambulance services	\$ 50
(b) Alternative birth centers	\$100
(c) Ambulatory surgical center	\$100
(d) Chemical dependency treatment service	\$ 5 per bed \$100/minimum \$1,000/maximum
(e) Community mental health and mental retardation center	\$500
(f) Day health care	\$ 50
(g) Ambulance service (Per non-volunteer service)	\$ 50
(Per volunteer service)	\$ 10
(h) Family care homes	\$ 25
(i) Group homes mentally retarded/developmentally disabled	\$ 50

(j) Health maintenance organizations	\$ 3 per 100 patients
(k) Home health agencies	\$ 50
(l) Homemaker	\$ 50
(m) Hospice	\$ 10
(n) Hospitals	
1. Accredited hospital	\$ 3 per bed \$100/minimum \$1,000/maximum
2. Non-accredited hospital	\$ 5 per bed \$100/minimum \$1,000/maximum
(o) Intermediate care facilities	\$ 5 per bed \$100/minimum \$1,000/maximum
(p) Medical detoxification services	No fee
(q) Non-emergency health transportation service (per service)	\$ 50
(r) Nursing home	\$ 5 per bed \$100/minimum \$1,000/maximum
(s) Outpatient clinics and ambulatory care facilities	\$100
(t) Personal care home	\$ 2 per bed \$50/minimum \$500/maximum
(u) Primary care center	\$100 \$15 per satellite
(v) Psychiatric hospitals	
1. Accredited	\$ 3 per bed \$100/minimum \$1,000/maximum
2. Non-accredited hospital	\$.5 per bed \$100/minimum \$1,000/maximum
(w) Rehabilitation (outpatient)	\$ 50
(x) Renal dialysis	\$ 10 per station
(y) Rural health clinics	\$ 50
(z) Skilled nursing facilities	\$ 5 per bed \$100/minimum \$1,000/maximum

C. HERNANDEZ, Commissioner
 E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 2, 1984

FILED WITH LRC: August 9, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the auditorium of the Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify the following office in writing by September 16, 1984: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther

(1) Type and number of entities affected: All licensed health facilities, primarily hospitals, long term care facilities and home health agencies.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: This amendment will not result in any additional reports required.

(2) Effects on the promulgating administrative body: This will allow the Cabinet and the Board to obtain data on a more timely basis.

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the existing requirement some health facilities are not submitting reports on a timely basis. This provision establishes a deadline and makes compliance a condition of licensure rather than annual relicensure.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. As a rule, licensure regulations for health services are not subject to tiering.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
(Proposed Amendment)

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)

PURSUANT TO: KRS [13.082,] 216B.040, 216B.105(3)

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals.

Section 1. Scope of Operations and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 2. Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of hospital training.

(3) "Registered records administrator" means a person who is certified as a Registered Records Administrator by the American Medical Record Association.

(4) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an Accredited Record Technician by the American Medical Record Association.

(5) "Qualified dietitian" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietitian by ADA; or

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has bachelor of science degree in home economics and three (3) years of work experience with a registered dietitian.

(6) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(9) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsibility, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at such meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. Such reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility including lines of authority, responsibility and communication, and departmental organization;

(b) Admission policies which assure that patients are admitted to the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(g) There shall be an effective procedure for recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable); and

(k) Discharge and termination of services.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person(s) or agency responsible for the post-discharge care of the patient. All pertinent information concerning post-discharge needs shall be provided to the responsible person(s) or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care facilities which can provide a level of inpatient care not provided by the hospital. Any facility which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered to be in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If the patient is transferred to another health care facility or to the care of a home health agency, a transfer form shall accompany the patient or be sent immediately to the home health agency. The transfer form shall include at least: attending medical staff member's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care, and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to another health care facility or home health agency within fifteen (15) days of the patient's discharge.

(c) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership. For purposes of this document, medical staff shall mean physicians, and dentists when applicable.

2. Define and describe the responsibilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges to include credentials review.

3. Provide a mechanism for appeal of decisions regarding staff membership and privileges.

4. Provide a method for the selection of officers of the medical staff.

5. Establish requirements regarding the frequency of, and attendance at, general staff and department/service meeting of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, tissue committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and all

other related services and shall have written personnel policies and procedures which shall be available to all hospital personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for pre-employment and periodic health examination. All employees shall have a chest x-ray or tuberculin skin test prior to employment and annually thereafter.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, social security number;
2. Health records;
3. Evidence of current registration, certification, or licensure of personnel;
4. Records of training and experience;
5. Records of performance evaluation.

(10) Physical and sanitary environment.

(a) The condition of the physical plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be current written infection control measures, including:

1. Policies concerning the admission and isolation of patients with specific or suspected infectious diseases, protective isolation of appropriate patients and protective routine for personnel and visitors;
2. Written procedures for the bacteriological testing of all areas of possible infection. Results of all testing shall be recorded and reported to the infection control committee;
3. The method of control used in relation to the sterilization of supplies and water; and
4. Policies for the protection of patients from employees who have a communicable disease.

(e) The hospital shall provide inservice education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.
2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.
3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.
4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.
5. The facility shall be kept free from insects and rodents with harborages and entrances for these eliminated.

6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g) Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and aggregated in rigid containers immediately after use. After use, all needles shall also be rendered unusable. The rigid containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020.

(h) The hospital shall establish a written policy for the handling and disposal of all infectious and pathological waste. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

1. All unpreserved tissue specimens from surgical or necropsy procedures shall be incinerated, on site or off site.

2. The following waste shall be sterilized before disposal or be disposed of by incineration if they are combustible:

- a. Dressings and materials from open or contaminated wounds;
- b. Waste materials and disposable linens from isolation rooms;
- c. Culture plates;
- d. Test tubes;
- e. Sputum cups; and
- f. Contaminated sponges and swabs.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in separate areas ventilated to the exterior of the buildings; this air shall not be allowed to recirculate into the facility.

(11) Medical records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location(s) for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particular attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission and name of attending medical staff member;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member; and, if given verbally, undersigned by the medical staff member upon his next visit to hospital;

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, or dentist when applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by attending surgeon, or oral surgeon, to include anesthesia record signed by anesthesiologist or anesthetist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Physician's, or dentist's when applicable, progress notes and nurses' observations;

11. Record of temperature, pulse and respiration;

12. Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, as is applicable;

13. Discharge summary, including condition of patient on discharge, and date of discharge; and

14. In case of death, autopsy findings, if performed.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure per-

formed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) The attending medical staff member shall assume full responsibility for diagnosis and care of his/her patient. A physician, or other member of the medical staff if so designated in the hospital bylaws, shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.

(c) The attending medical staff member shall state his final diagnosis, complete the discharge summary and sign the records within fifteen (15) days following the patient's discharge.

(d) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(e) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing care plans, and nursing care procedures.

1. Nursing care plans shall be developed for each patient and shall be kept current daily. Plans shall indicate long and short-term goals, nursing care needed, and methods, approaches and modifications necessary to insure best results for the patient.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall

be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physician, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. No medication or treatment shall be given without a written order signed by a physician or dentist, when applicable. Telephone orders for medications shall be given only to registered nurses or a pharmacist and signed by the medical staff member within twenty-four (24) hours from the time the order is given.

6. No form of patient restraint or protective device other than bed rails shall be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary, the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) qualified dietitian or nutritionist, either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage, handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code). [The Division for Licensing and Regulation, Office of Inspector General, Cabinet for Human Resources shall carry out the provisions of this Act as they relate to inspections, follow-up and recommendations for issuance and/or revocation of food service permits.]

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. Laboratory services shall be under the direction of a pathologist on a full-time, regular part-time, or a consultative basis. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Signed reports of all laboratory services provided shall be filed with the patient's medical record and

duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by a medical staff member.

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their inservice training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgery shall be macroscopically, and if necessary, microscopically examined by the pathologist.

a. A list of tissues which do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the minimum proficiency testing and quality control provisions in accordance with Medicare certification requirements.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and disposition of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for further testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review committee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the physician's, or dentist's when applicable, original order, or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for and disposition of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications/prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of a physician or dentist, and the order shall contain a concise statement of the reason for the service/examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

(c) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration/rehabilitation service.

(a) Hospitals in which physical restoration/rehabilitation services are available shall provide individualized

techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for physical therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Physical therapy services shall be provided only upon written orders of a medical staff member.

(f) Physical therapy services shall be provided by or under the supervision of a licensed physical therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department/service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person(s) transporting patient, and time of arrival;

b. History of present complaint and physical findings;

c. Laboratory and x-ray reports, where applicable;

d. Diagnosis;

e. Treatment ordered and details of treatment provided;

f. Patient disposition;

g. Record of all referrals;

h. Instructions to the patient and/or family for those not admitted to the hospital; and

i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room(s) and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant,

anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical work-up in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a pre-anesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a post-anesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The post-anesthetic follow-up note shall be written within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and

delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered before the infant is removed from the delivery room.

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the re-

quirements of psychiatric hospitals operations and services, licensure regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 2, 1984

FILED WITH LRC: August 9, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the auditorium of the Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify the following office in writing by September 16, 1984: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther

(1) Type and number of entities affected: All providers licensed under this regulation.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This amendment is necessary due to an internal administrative change in the Cabinet, transferring the responsibility for enforcing the food service code from the Division of Licensing and Regulation to the Division of Consumer Health Protection.

Tiering:

Was tiering applied? No. Not applicable.

**CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
(Proposed Amendment)**

902 KAR 20:066. Operation and services; day health care programs.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1),(2)

PURSUANT TO: KRS [13.082,] 216B.040, 216B.105(3)

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of day health care programs and the services to be provided by day health care programs.

Section 1. Scope of Operations and Services. Day health care programs provide, during specified daytime hours, continuous supervision of the patient to assure that health care needs are being met, supervision of self-administration of medications, personal care services, self-care training, and social and recreational activities. This program serves persons of all ages who may be frail, moderately handicapped, slightly confused or have incapacitating chronic conditions, who need organized health care during the day.

Section 2. Definitions. (1) "Administrator" means a person who:

(a) Has a minimum of two (2) years college, or equivalent training with at least two (2) years of clinical experience, a degree, or a license in a health related profession; or

(b) Is licensed as a nursing home administrator pursuant to KRS 216A.080.

(2) "Physical therapist" means a person who is currently licensed by the Kentucky State Board of Physical Therapy.

(3) "Speech pathologist" means a person who:

(a) Meets the educational and experience requirements for a certificate of clinical competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or

(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

(4) "Personal care services" means services to help residents to achieve and maintain good personal hygiene including but not limited to: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, washing, grooming and cutting of hair.

(5) "Program" means a day health care program.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the operation of the program and for compliance with federal, state and local laws and regulations pertaining to the operation of the program.

(b) The licensee shall establish policies, consistent with state laws and regulations, for the administration and operation of the service, including:

1. A description of services included in the program.

2. A procedure for providing first aid and making arrangements for medical care with a physician or hospital in case of accidents or medical emergencies.

3. A procedure for transporting patients to a physician or hospital in case of an accident or a medical emergency.

4. Procedures for admission, evaluation of patient's needs, and discharge.

(2) Administrator. All programs shall have an administrator who shall be responsible for the operation of the facility and shall delegate such responsibility in his or her absence.

(3) All patients shall be evaluated upon admission to determine their program needs. A care plan shall be developed for each patient.

(4) Personnel.

(a) The program shall employ or have access to a sufficient number of qualified personnel as may be required to provide the services required by this regulation, and indicated by the need of the program's patients.

(b) Written job descriptions and standards of qualifications shall be developed for each category of personnel. Job descriptions shall include necessary qualifications, lines of authority and specific duty assignments. Job descriptions shall be reviewed annually and revised as necessary.

(c) Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records and evaluation of performance, along with employee's name, address, and social security number.

(d) Supportive personnel, assistants and volunteers shall be supervised and shall function within the policies and procedures of the program.

(e) All employees shall have a test for tuberculosis either prior to or within the first week of employment and annually thereafter. Any employee contracting an infectious disease shall not appear at work until the infectious disease can no longer be transmitted.

(f) The program shall conduct an orientation for all new employees.

(g) A planned inservice training program shall be provided to all employees covering all policies and procedures pertinent to their roles within the program.

(h) The administrator shall attend educational programs appropriate to the responsibilities of the position and arrange for other professional personnel to attend appropriate educational programs on supervision and subjects related to personal care, activities, nutrition, and other pertinent subjects.

(i) Staffing. The administrator shall designate the person who will be primarily responsible for the coordination and provision of dietary and activity service(s).

(5) Patient's records.

(a) The facility shall maintain an individual record for each patient and shall develop a system of identification and filing to insure prompt location of each patient's record. Records shall be treated with confidentiality, shall be in ink or typed and shall be legible. The record shall include: the patient's name, address, and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, telephone number, address of next of kin or other

responsible person; and date of admission and discharge.

(b) A progress record shall be maintained stating goals for each patient and shall indicate any changes in the patient's condition, behavior, responses, attitude, appetite, and other changes as noted by staff, and shall include a discharge summary. Each entry in the record shall be signed and dated.

(c) If the patient has been referred on orders of a physician, the record shall contain a dated and signed medical summary and care plan including orders for special diet, contra-indications for specific types of activities, and other special procedures required for the safety and well-being of the patient.

(d) If consultants are involved in the program, they shall make a written report of their findings and recommendations at the time of their visits to be included in the patient's record.

(e) If a medication must be administered to a patient during the period of time he is in the program, a medication sheet shall be maintained which contains the date, time given, name of medication, dosage, name of prescribing physician and by whom administered.

(f) A full written report of any incident or accident involving a patient or employee shall be made and signed by the administrator or his designee and shall include the names of any witnesses.

(g) Records shall be retained for a minimum of five (5) years or, in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(6) Registry. The program shall maintain a permanent chronological patient registry book showing date of admission, name of patient, and date of discharge.

(7) Equipment. The program shall have equipment of sufficient quality and quantity to meet patients' needs.

Section 4. Services. (1) Health services.

(a) Health care services shall include:

1. Supervision and monitoring of the patients to assure that health care needs are being met including supervision of self-administration of medications.

2. Providing first aid and making arrangements for medical care with a physician or hospital in case of accidents or medical emergencies.

3. Arranging for the transportation of patients in case of accidents or medical emergencies.

4. Storage of medicines. All medicines kept by the program shall be labeled with the resident's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use. Those medicines that require refrigeration must be kept in the refrigerator. All medicines kept by the program shall be kept under lock.

(b) Medical therapeutic services such as physical therapy or speech therapy shall be administered only upon written order of the physician and shall be provided by a physical therapist or a speech pathologist or under the supervision of a physical therapist or a speech pathologist.

(2) Self-care training. The program shall provide a training program for self-care to assist the patients to gain independent living status.

(3) Personal care. Personal care services shall be provided.

(4) Activity program.

(a) The day health care program shall include a

balanced activity program for all ages served. Patients shall choose and plan, when feasible, a variety of activities that they desire, and the involvement of the staff shall be advisory. There shall be a written activity program with activities planned to fill patient needs with sufficient variety for choice including:

1. Recreation and physical exercise;
2. Diversion, games, music, and crafts;
3. Intellectual and educational stimulation, current events, and educational films; and
4. Participation in planning menus and preparation of food.

(b) Activities shall be group or individually oriented aimed at participation at all levels of capability.

(c) A specific period of the day shall be set aside for rest. There shall be appropriate accommodations for rest.

(5) Transportation. If transportation of the patient to and from the program is provided by the day health care program:

(a) Special provision shall be made for patients who use wheelchairs; and

(b) An escort or assistant to the driver shall be provided when necessary.

(6) Dietary services.

(a) Food service and preparation.

1. The program shall offer one (1) or more hot meals providing no less than one-third ($1/3$) of the daily nutritional requirements per meal;

2. Foods shall be prepared by appropriate methods to conserve their nutritive value and enhance their flavor and appearance.

3. Nutritional needs shall be met in accordance with the current Recommended Dietary Allowance of the Food and Nutrition Board of the National Research Council, adjusted for age, sex and activity and in accordance with physician's orders.

4. Food shall be cut, chopped or ground to meet individual needs.

5. Effective equipment shall be provided and procedures established to maintain food at proper temperature during service.

6. Patients requiring help in eating shall be assisted.

7. Adaptive self-help devices shall be provided where required in such a manner as to contribute to the patient's independence in eating.

(b) Maintenance of sanitary condition.

1. The dietary department shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code). [The Division for Licensing and Regulation, Office of the Inspector General, Department for Human Resources shall carry out the provisions of this Act as they relate to inspections, follow-up and recommendations for issuance and revocation of food service permits.] When the program contracts for food service, the catering service shall comply with the applicable requirements of the Food Service Code and the applicable requirements of this regulation.

2. All perishable foods shall be refrigerated at the appropriate temperature and in an orderly and sanitary manner. All leftover food items shall be covered and dated when refrigerated.

(7) Housekeeping and maintenance services.

(a) The facility shall be maintained in a safe and clean manner, free from offensive odors, safety hazards and accumulations of dirt, rubbish and dust.

(b) Deodorizers shall not be used to conceal odors caused by unsanitary conditions or poor housekeeping practices.

(c) The grounds shall be kept free from refuse and litter. Areas around buildings, sidewalks, gardens and patios shall be kept clear of dense undergrowth.

(d) The facility shall be maintained free from insects and rodents.

(e) Windows and doors shall be screened.

(f) Harborages and entrances for insects and rodents shall be eliminated.

C. HERNANDEZ, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 2, 1984

FILED WITH LRC: August 9, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the auditorium of the Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify the following office in writing by September 16, 1984: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther

(1) Type and number of entities affected: All providers licensed under this regulation.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This amendment is necessary due to an internal administrative change in the Cabinet, transferring the responsibility for enforcing the food service code from the Division of Licensing and Regulation to the Division of Consumer Health Protection.

Tiering:

Was tiering applied? No. Not applicable.

CABINET FOR HUMAN RESOURCES Department for Health Services Certificate of Need and Licensure Board (Proposed Amendment)

902 KAR 20:160. Chemical dependency treatment services and facility specifications.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990 (1)(2)

PURSUANT TO: KRS [13.082,] 216B.040(2), 216B.105

NECESSITY AND FUNCTION: KRS 216.040 and 216B.105 mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides the licensure requirements for the operation and services and facility specifications of chemical dependency treatment programs.

Section 1. Scope of Operation and Services. A chemical dependency treatment service has a structured inpatient program which provides medical, social, diagnostic and treatment services to persons who suffer from illness related to the misuse or abuse of alcohol and other drugs. Chemical dependency treatment services last generally for a duration of less than thirty (30) days, are hospital based or free-standing with eight (8) or more patient beds and under the medical direction of a physician with continuous nursing services.

Section 2. Definitions. (1) "Aftercare" means the process of providing continued contact following primary chemical dependency treatment which will support and increase the gains made in the treatment process.

(2) "Governing authority" means the individual, agency, partnership or corporation in which the ultimate responsibility and authority for the operation of the facility is vested.

(3) "Interdisciplinary team" means a group of at least four (4) professionals including a physician, registered nurse, certified chemical dependency counselor and a person with a master's degree in psychology, social work or counseling.

(4) "Qualified dietitian" means:

(a) A person who has a Bachelor of Science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietitian by ADA; or

(b) A person who has a Masters Degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a Bachelor of Science degree in home economics and three (3) years of work experience with a registered dietitian.

(5) "Restraint" means any physical or mechanical device used to restrict the movement of the patient or the movement of a portion of the patient's body.

Section 3. Administration and Operation. (1) Governing authority/licensee.

(a) The program shall have a recognized governing authority that has overall responsibility for the management and operation of the program and for compliance with federal, state and local laws and regulations pertaining to its operation.

(b) The governing authority shall appoint a program administrator who has a Bachelor's degree in a health or human services field or a Bachelor's degree in another field supplemented with one (1) year of work experience in the field of chemical dependency or who is a high school graduate with four (4) years of experience in the field of chemical dependency.

(c) The governing authority shall develop goals and objectives for the program and establish a written evaluation plan to assess the attainment of these goals and objectives on an annual basis.

(2) Program administrator.

(a) The program administrator shall be responsible for the daily management of the facility and provide liaison between the governing authority and staff members.

(b) The program administrator shall keep the governing authority fully informed of the operations of the facility through periodic reports and attendance at meetings of the governing authority.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity and reflect the programs of the facility.

(b) A written report of any incident or accident involving a patient (including medication errors and drug reactions), visitor or staff shall be made and signed by the program administrator and any staff member who witnessed the incident. The report shall be placed in an incident file.

(c) Licensure inspection reports, plans of correction and program evaluations shall be available to the public upon request at the facility.

(4) Policies.

(a) Administrative policies. The program shall have written administrative policies covering all aspects of the facility's operation to include:

1. A description of the organizational structure, staffing and allocation of responsibility and accountability;
2. A description of referral linkages with other facilities and providers;
3. A description of the services included in the program;
4. A policy for an expense and revenue accounting system following generally accepted accounting procedures;
5. A policy describing the use of volunteers in program activities; and
6. A policy for conducting program evaluation and quality assurance review.

(b) Patient care policies. Patient care policies shall be developed for all aspects of the program and include:

1. Actions to be taken when a patient is determined to be lost, unaccounted for or on other unauthorized absence;
2. A policy which specifies provisions for patient visitation and use of telephones;
3. A policy to specify the provision of emergency medical services; and
4. Admission and discharge policies including the categories of individuals accepted and not accepted by the program.

(c) Patient rights policies. There shall be written policies designed to enhance the dignity of all patients and to protect their rights as human beings. These policies shall assure that each patient:

1. Is informed of all rules and regulations governing patient conduct and responsibilities, including a procedure for handling grievances;
2. Is informed, prior to admission for rehabilitation, of

the services available at the facility and of charges for treatment including any charges not covered under Medicare, Medicaid, or other third-party payor arrangements;

3. Is encouraged and assisted to understand and exercise patient rights, voice grievances and recommend changes in policies and services. Upon the patient's request the grievances and recommendations shall be conveyed within a reasonable time to an appropriate decision making level within the organization which has authority to take corrective action;

4. Is afforded the opportunity to participate in the planning of his/her treatment and to refuse to participate in experimental research;

5. Is assured confidential treatment of records and is afforded the opportunity to approve or refuse their release to any individual not involved in his care except as required by Kentucky law or third party payment contract; and

6. Is treated with consideration, respect and full recognition of personal dignity and individuality including privacy in treatment and in the care of personal health needs.

(5) Personnel.

(a) The licensee shall establish personnel policies for the program which shall be reviewed, revised, approved and updated on an annual basis.

(b) There shall be an individual personnel record for each person employed by the facility which shall include the following:

1. All employees shall have a test for tuberculosis either prior to or within the first week of employment and annually thereafter;
2. Evidence of education, training and experience of the individual along with a copy of the current license or certification credentials, if applicable;
3. Evidence that employees have received orientation to the facility's written policies within the first week of employment; and
4. Evidence of regular in-service training which corresponds with job duties and includes a list of training and dates completed.

(6) Staffing requirements. The program shall have adequate personnel to meet the needs of patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the individual treatment plans. If the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the program administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

(a) Medical director. There shall be a medical director who is a physician having responsibility for the medical direction of the program including admission of individuals, approving individual treatment plans and participating in the quality assurance review. The medical director or a physician designated by the medical director shall be available twenty-four (24) hours a day on at least an on-call basis.

(b) Interdisciplinary team. There shall be an interdisciplinary team responsible for developing the individual treatment plans, aftercare plans and conducting the quality assurance reviews.

(c) Treatment coordinator. The program shall have a full time treatment director whose qualifications are defined in writing and approved by the governing authority. The treatment director shall be responsible for:

1. Coordinating the interdisciplinary team in developing the individual treatment plans;
2. Initiating a periodic review of each patient's treatment plan for necessary changes;
3. Supervising the proper maintenance of patient records; and

4. Coordinating the interdisciplinary team in developing an aftercare plan for each patient which assures continuity of care.

(d) Nursing services. Nursing services shall be available on a twenty-four (24) hour basis. The program shall have at least one (1) full-time registered nurse. When a registered nurse is not on duty there shall be a licensed practical nurse present who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

(e) Medical supervision. A physician, or registered nurse under the direction of a physician, shall supervise implementation of the medical aspects of the treatment plan and all staff directly involved in patient medical care.

(f) In-service training. All personnel shall participate in ongoing in-service training programs relating to their respective job activities. These programs shall include thorough job orientation for new personnel and regular in-service training programs emphasizing professional competence and the human relationship necessary for effective health care.

(7) Patient records.

(a) An individual record shall be maintained for all patients with entries signed and dated by the person making the entry.

(b) At the time of admission the following information shall be entered into the patient's record:

1. Name, date of admission, birth date and place, marital status and social security number;
2. Person to contact in case of emergency;
3. Next of kin; and
4. Type and place of employment.

(c) The record shall contain documentation of all medical services provided during detoxification and rehabilitation including the results of physical examinations.

(d) The record shall contain the patient's treatment plan outlining goals and objectives for the individual during treatment. The record shall also contain documentation of how the plan was implemented and of patient progress in meeting the goals and objectives outlined in the treatment plan.

(e) The record shall contain notation of all medication administered including date, time, dosage, frequency of administration and the name of the person administering each dose.

(f) The record shall contain a discharge summary and a plan for aftercare. (g) The discharge summary shall be entered in the patient's record within seven (7) days after discharge and include:

1. The course and progress of the patient with regard to the individual treatment plan;
2. The general observations of the patient's condition initially, during treatment and at discharge; and
3. The recommendations and arrangements for further treatment including prescribed medications and aftercare.

(h) If the patient is referred to other service providers after discharge, a copy of the discharge summary shall be promptly sent to the provider with the patient's permission.

(i) After a patient's death or discharge the completed record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longest.

(8) Linkage agreements. The program shall have linkages through written agreements with providers of other levels of care which may be medically indicated to supplement the services available in the program. These linkages shall include a hospital and an emergency medical transportation service in the area.

(9) Quality assurance. In order to determine the appropriateness and the quality of the services delivered the service shall have a quality assurance program that includes effective mechanisms for reviewing and evaluating patient care on a regular basis by the interdisciplinary team.

(10) Medications.

(a) All prescription and nonprescription medications administered to patients shall be noted in writing with the date, time and dosage and signed by the person administering the medication.

(b) All prescription medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, date, physician name, caution statement and directions for use.

(c) Prescription and nonprescription medication shall not be administered to any patient except on the written order of a physician. All medications shall be administered by licensed personnel.

(d) All medicines shall be kept in a locked storage area which shall be well lighted and of sufficient size to permit storage without crowding. Medications requiring refrigeration shall be kept in a separate locked box in a refrigerator. Drugs for external use shall be stored separately from those administered by mouth or injection.

(e) Medication errors and drug reactions shall be reported immediately to the medical director and treatment coordinator and an entry made in the patient's record.

(f) An emergency medical kit, with contents approved by a physician, shall be maintained at the facility. It shall be inspected after use or at least monthly to remove deteriorated and outdated drugs and ensure completeness of content.

(11) Restraints. Requirements for the use of restraints shall be met pursuant to the Kentucky mental patients bill of rights, 902 KAR 12:020.

(12) Activities schedule. A daily schedule of program activities shall be posted in the facility.

Section 4. Provision of Services. (1) Detoxification. Medical detoxification services pursuant to the requirements of 902 KAR 20:111 shall be available directly or through another licensed provider for patients who require detoxification.

(2) Rehabilitation. The program shall provide at least the following services:

(a) Medical services as needed, provided under the supervision of a physician;

(b) Scheduled individual, group, and family counseling;

(c) Psychological testing and evaluation as needed;

(d) Education of patients on the subject of chemical dependency and related lifestyle issues including nutrition and communication skills;

(e) Recreational activities with facilities and equipment shall be available consistent with the patient's needs and the therapeutic program;

(f) Referral to other rehabilitative or community service

agencies providing services not available through the program; and

(g) Aftercare services provided directly or through arrangement with other agencies.

(3) Physical examinations. Within ten (10) days prior to or three (3) days after admission for rehabilitation all patients shall have a physical examination with tests ordered by physician.

(4) Psycho-social history. All patients shall have a psycho-social history and assessment interview within seventy-two (72) hours after admission for rehabilitation entered into the patient record which includes:

- (a) Drinking and drug use history;
- (b) A determination of current emotional state;
- (c) Vocational history;
- (d) Familial relationships; and
- (e) Educational background.

(5) Treatment plan. The interdisciplinary team, with the participation of the patient, shall develop an individual treatment plan within four (4) days after admission for rehabilitation based on the patient's medical evaluation and psycho-social history and assessment. The treatment plan shall:

(a) Specify the services required for meeting the patient's needs;

(b) Identify goals necessary for the patient to achieve, maintain or re-establish physical health and adaptive capabilities;

(c) Establish goals with both long-term and short-term objectives and the anticipated time expected to meet these goals; and

(d) Identify the locations and frequency of treatment procedures including referrals for any required services which are not provided by the program.

(6) The treatment plan shall be reviewed and updated at least weekly for the duration of the inpatient treatment.

(7) The patient's family or significant others shall be involved in the treatment process, if approved by the patient. Documentation shall be included in the medical record which establishes that an attempt was made to involve family members or significant others.

(8) Aftercare plan.

(a) There shall be a written individual aftercare plan developed by the interdisciplinary team, the patient and, with the patient's permission, the patient's family or significant others prior to the completion of treatment. The individual aftercare plan shall be designed to establish continued contact for the support of the patient.

(b) The aftercare plan shall include the methods and procedures whereby the needs of the individual are met by the aftercare personnel through direct patient contact or assistance from other community human services organizations.

(c) When aftercare services are provided directly, a periodic review and updating of the aftercare plan shall be conducted with the frequency of review determined by the interdisciplinary team, the patient, and with the patient's permission, the patient's family or significant others. If the patient is referred to another agency for aftercare services, follow-up shall be conducted to determine if services are being provided.

Section 5. Compliance with Building Codes, Ordinances and Regulations. (1) Nothing stated herein shall relieve the licensee from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(2) The following requirements shall apply where ap-

plicable and as adopted by the respective agency authority:

(a) Requirements for safety pursuant to 815 KAR 10:020, as amended;

(b) Requirements for plumbing pursuant to 815 KAR 20:010 through 20:191, as amended;

(c) Requirements for making buildings and facilities accessible to and useable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.

(3) The facility shall be currently approved by the Fire Marshal's office before licensing and relicensure is granted by the licensure agency.

(4) All facilities shall receive any necessary approval from appropriate agencies prior to occupancy and licensure.

(5) Physical and sanitary environment.

(a) The condition of the physical plant and overall facility environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (on site or off site) and housekeeping.

(c) The facility buildings, equipment, and surroundings shall be kept in good repair, neat, clean, free from all accumulations of dirt and rubbish and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in approved containers and kept separate from other cleaning materials.

5. The facility shall be kept free from insects and rodents with harborage for these eliminated.

6. Garbage and trash shall be stored in closed containers in areas separate from those used for the preparation and storage of food and shall be cleaned regularly and in good repair.

(d) The facility shall have available at all times a quantity of linen essential to the proper care and comfort of residents.

1. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose.

2. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in separate areas ventilated to the exterior of the building.

Section 6. Facility Requirements and Special Conditions. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) The maximum room capacity shall be six (6) patients.

(b) The minimum room areas exclusive of toilet rooms, closets, lockers, wardrobes or vestibules shall be 100 square feet in one (1) bed room and eighty (80) square feet per bed in multibed rooms.

(c) In multiperson rooms partitioning, cubicle curtains or placement of furniture shall be used to provide privacy. An ample closet and drawer space shall be provided for the storage of patient's personal property.

(d) The placement of patients in multibed rooms shall

be appropriate to the ages and program needs of the patients.

(2) Lavatory. In single and multibed rooms with a private toilet room, the lavatory may be located in the toilet room. Where two (2) or more patients share a common toilet a lavatory shall be provided in each patient room.

(3) Centralized toilet area. Where a centralized toilet area is used, the facility shall provide the following for each sex on every floor: One (1) toilet for each eight (8) residents or a major fraction thereof. Toilets must be separated by a permanent partition and at least one (1) toilet for each sex must be designed for wheelchair use.

(4) Patient baths. There shall be one (1) shower stall or one (1) bathtub for each fifteen (15) patients not individually served. Each bathtub or shower shall provide space for the private use of the fixture and for dressing.

(5) Patients shall be encouraged to take responsibility for maintaining their own living quarters and for other day-to-day housekeeping activities of the program, as appropriate to their clinical status.

(6) Dietary services.

(a) The facility shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) qualified dietitian to supervise the nutritional aspects of patient care and approve all menus on at least a consultative basis.

3. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with physician orders.

(c) Meals served shall correspond with the posted menu. When changes in the menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) Food shall be prepared by methods that conserve nutritive value, flavor and appearance, and shall be served at the proper temperature.

(e) At least three (3) meals shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and breakfast. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(f) The facility shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code). [The Division for Licensing and Regulation, Office of the Inspector General, Cabinet for Human Resources, shall carry out the provisions of the Act as they relate to inspections, follow-up and recommendations for issuance or revocation of food service permits.]

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 2, 1984

FILED WITH LRC: August 9, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the auditorium of the Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify the following office in writing by September 16, 1984: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther

(1) Type and number of entities affected: All providers licensed under this regulation.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This amendment is necessary due to an internal administrative change in the Cabinet, transferring the responsibility for enforcing the food service code from the Division of Licensing and Regulation to the Division of Consumer Health Protection.

Tiering:

Was tiering applied? No. Not applicable.

CABINET FOR HUMAN RESOURCES Department for Health Services (Proposed Amendment)

902 KAR 45:005. Food service code.

RELATES TO: KRS 219.011 to 219.081, 219.991(1)

PURSUANT TO: KRS [13.082,] 194.50, 211.090

NECESSITY AND FUNCTION: KRS 219.011 to 219.081 and 219.991(1), the Kentucky Hotel and Food Service Establishment Act, authorizes the Cabinet for Human Resources to regulate food service establishments in Kentucky. KRS 219.041(2) directs the cabinet to adopt a State Food Service Code. The function of this regulation is to establish a uniform State Food Service Code for the regulation of all food service establishments within the Commonwealth of Kentucky for the purpose of protecting the public health.

Section 1. Citation of Regulation. This regulation may be cited as "State Food Service Code."

Section 2. Definitions. As used in this regulation: (1) "Adulterated food and food products" means any food or food product adulterated as provided by KRS 217.025 of the Kentucky Food, Drug and Cosmetic Act.

(2) "Approved" means acceptable to the cabinet based on determination as to conformance with appropriate standards and good public health practices.

(3) "Cabinet" means the Cabinet for Human Resources, the Department for Health Services, the local health department having jurisdiction and their duly designated representatives.

(4) "Chemical preservative" means any chemical that, when added to a food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.

(5) "Closed" means without openings large enough for the entrance of insects. An opening of one-sixteenth (1/16) inch or less is closed.

(6) "Corrosion-resistant material" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions and other conditions of the use environment.

(7) "Easily cleanable" means that surfaces are readily accessible and made of such material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

(8) "Employee" means the permit holder, individuals having supervisory or management duties and any other person working in a food handling establishment.

(9) "Equipment" means stoves, ranges, hoods, ovens (including microwave), cookers, bins, conveyor belts, refrigerators, freezers, mixers, grinders, saws, sinks, tables, display cases, meat blocks, wrapping machines, scales, checkout counters, vehicles and similar items.

(10) "Food contact surfaces" means those surfaces with which food may come in contact, and those surfaces that drain onto surfaces that may come in contact with food.

(11) "Kitchenware" means all multi-use utensils other than tableware used in the storage, preparation, conveying or serving of food.

(12) "Misbranded food and food products" means any food or food product misbranded as provided by KRS 217.035 of the Kentucky Food, Drug and Cosmetic Act.

(13) "Mobile food unit" means a food service establishment that is designed to be readily movable.

(14) "Packaged" means bottled, canned, cartoned, or securely wrapped at a food processing establishment.

(15) "Package" means any container or wrapping in which any food is enclosed for use in the delivery or display to retail purchasers, but does not include: shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; containers used for tray pack displays in retail establishments; transparent wrappers or containers which do not bear written, printed, or graphic matter obscuring the label information, and any other exemption granted pursuant to the Federal Food, Drug and Cosmetic Act.

(16) "Perishable food" means food of such type or in

such conditions or physical state that it may spoil or otherwise become unfit for human consumption.

(17) "Pesticides" includes pesticides, insecticides, fungicides, herbicides, and rodenticides as defined in KRS 217B.040(2), (3), (4), (5), and (9) and any other toxic substance or compound designated by the department.

(18) "Potentially hazardous food" means any food which consists in whole or in part of milk or milk products, eggs or egg products, meat or meat products, poultry or poultry products, fish or fish products, shellfish (oysters, clams, mussels and edible crustacea) or shellfish products, cooked rice, or other ingredients including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. This term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of 4.6 or below or a water activity (aw) value of 0.85 or less, nor does it include hard-boiled, peeled eggs, commercially prepared, packaged and properly labeled.

(19) "Pushcart" means a non-self-propelled vehicle limited to serving non-potentially hazardous foods or commissary-wrapped food maintained at safe temperatures or limited to the preparation and serving of frankfurters.

(20) "Reconstituted" means dehydrated food products combined with water or other liquids.

(21) "Safe temperature" means, when considering potentially hazardous food, food temperature of forty-five (45) degrees Fahrenheit or below and 140 degrees Fahrenheit or above, except for frozen food, which should be stored at zero (0) degrees Fahrenheit, or less.

(22) "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

(23) "Sealed" means free of cracks or other openings which permit the entry or passage of moisture.

(24) "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping material including bags, toothpicks and similar articles which are designed for one-time, one-person use and then discarded.

(25) "Tableware" means all multi-use eating and drinking utensils.

(26) "Temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days.

(27) "Utensil" means any implement used in the preparation, storage, transportation or service of food.

(28) "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

Section 3. Applicability. The requirements of this regulation are applicable to all food service establishments, as defined by KRS 219.011(3) located within the Commonwealth of Kentucky.

Section 4. Application for Permit to Operate a Food Service Establishment. Any person desiring to operate a food service establishment shall make written application for a permit on forms provided by the cabinet. Such application shall include the name and address of the applicant, the location and type of the proposed food service establishment, and the signature of the applicant. If the application is for a temporary food service establishment, it

shall also include the dates of the proposed operation. Prior to approval of an application for permit, the cabinet shall inspect the proposed food service establishment to determine compliance with the provisions of this regulation. The cabinet shall issue a permit to the applicant if the inspection reveals that the proposed food service establishment complies with the requirements of this regulation.

Section 5. Food Supplies. (1) Food shall be wholesome and free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all applicable federal and state laws relating to food and food labeling. The use of food and food products canned, prepared or processed in the home is prohibited.

(2) Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the Grade A quality standards as established by law and regulation. Dry milk and milk products shall be made from pasteurized milk and milk products.

(3) All shellfish, fresh or frozen shall be packed in non-returnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, mussels, clams and edible crustacea) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and the interstate certification number issued by the state or foreign shellfish control agency and shall comply with applicable cabinet regulations relating thereto.

(4) Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquid or pasteurized dry egg or egg products shall be used; except that hard-boiled peeled eggs, commercially prepared and packaged, may be used.

(5) All meat and meat products, poultry and poultry products shall have been inspected and passed for wholesomeness under an official governmental regulatory program.

(6) All fish and fish products shall be from approved sources that comply with all applicable federal and state laws relating to food and food labeling.

Section 6. Food Protection. (1) Food shall be protected while being stored, prepared, displayed, served, or transported from potential contamination including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage or condensation. The temperature of potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below or 140 degrees Fahrenheit or above at all times, except during necessary periods of preparation and service. Shell eggs shall be stored at sixty (60) degrees Fahrenheit or below.

(2) In the event of fire, flood, power outage, water cut-off, or similar catastrophic event that might result in the contamination of food, or that might prevent potentially hazardous foods from being held at required temperatures, the person in charge shall immediately contact the cabinet. Upon receiving notice of this occurrence, the cabinet shall take whatever action that it deems appropriate to protect the public health.

Section 7. Food Storage. (1) Food, whether raw or prepared, if removed from the container or package in

which it was obtained, shall be stored in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.

(2) Containers of food shall be stored a minimum of six (6) inches above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:

(a) Metal pressurized beverage containers, and cased food packaged in cans, glass or other waterproof containers need not be elevated when the food container is not exposed to floor moisture;

(b) Containers may be stored on dollies, racks or pallets, provided such equipment is easily movable.

(3) Food or containers of food shall not be stored under exposed sewer or non-potable water lines, except for automatic fire protection sprinkler heads. Food shall not be stored in toilet room or toilet room vestibule.

(4) Food not subject to further washing or cooking before serving shall be stored in a way that protects it against contamination from food requiring washing or cooking. Food shall be stored in such a way that protects it from cross-contamination.

(5) Packaged food shall not be stored in contact with water or undrained ice. Wrapped sandwiches shall not be stored in direct contact with ice or water.

(6) Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar, flour, meal and similar products, not stored in the container or package in which it was obtained shall be stored in a container identifying the food by common name.

(7) Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potentially hazardous food at the required temperature of forty-five (45) degrees Fahrenheit or below during storage. Each mechanically refrigerated facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer, accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers accurate to plus or minus three (3) degrees Fahrenheit may be used in lieu of indicating thermometers. Cold potentially hazardous foods shall be maintained at forty-five (45) degrees Fahrenheit or below during transportation.

(8) The temperature of potentially hazardous foods requiring refrigeration shall be forty-five (45) degrees Fahrenheit or below except during necessary periods of preparation.

(9) Frozen foods shall be kept frozen and should be stored at a temperature of zero (0) degrees Fahrenheit or below.

(10) Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers, or food utensils, except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head, provided: tubes, cold plates and etc., are kept clean, in good repair, and are constructed from approved materials. Ice used for cooling and maintaining cold temperatures of stored food and food containers shall not be used for human consumption.

(11) Enough conveniently located hot food storage

facilities shall be provided to assure the maintenance of potentially hazardous food at the required temperature of 140 degrees Fahrenheit or above during storage. Each hot food facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the coolest part of the facility and located to be easily readable. Recording thermometers, accurate to plus or minus three (3) degrees Fahrenheit, may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bainmaries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer accurate to within plus or minus three (3) degrees Fahrenheit shall be readily available and used by the establishment personnel to check internal food temperatures.

(12) The internal temperature of potentially hazardous foods requiring hot storage shall be 140 degrees Fahrenheit or above except during necessary periods of preparation and such hot potentially hazardous foods to be transported shall be held at an internal temperature of 140 degrees Fahrenheit at all times during transportation.

Section 8. Food Preparation. (1) Food shall be prepared with the least possible manual contact, using suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination.

(2) Raw fruits and raw vegetables shall be washed thoroughly before being cooked or served.

(3) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140 degrees Fahrenheit except that:

(a) Poultry, poultry stuffings, and stuffed meats shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process.

(b) Raw pork and products containing raw pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit.

(c) Rare roast beef shall be cooked to an internal temperature of at least 130 degrees Fahrenheit, and rare beef steak shall be cooked to a temperature of 130 degrees Fahrenheit unless otherwise ordered by the immediate customer.

(4) Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes.

(5) Liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.

(6) Potentially hazardous foods that were cooked and then refrigerated shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food storage facility. Steam tables, bainmaries, warmers, and other hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.

(7) Non-dairy creaming, whitening, or whipping agents may be reconstituted on the premises only when they will be stored in sanitized, covered containers not exceeding one (1) gallon in capacity and cooled to forty-five (45) degrees Fahrenheit or below.

(8) Metal stem-type numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided and used to assure attainment of proper internal cooking temperatures of all potentially hazardous foods.

(9) Potentially hazardous foods shall be thawed:

(a) In refrigerated units in a way that the temperature of the food does not exceed forty-five (45) degrees Fahrenheit; or

(b) Under potable running water of a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or

(c) In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process.

Section 9. Food Display and Service. (1) Potentially hazardous foods shall be kept at a temperature of forty-five (45) degrees Fahrenheit or lower or at a temperature of 140 degrees Fahrenheit or higher during display and service.

(2) Food on display shall be protected from consumer contamination by the use of easily cleanable counter-protector devices, display cases and similar equipment in addition to other means of protection.

(3) Reuse of soiled tableware by self-service consumers returning to the service area for additional food is prohibited. Beverage cups and glasses are exempt from this requirement. Clean tableware shall be made available and a sign shall be posted in self-service food area to inform customers of this requirement.

(4) Suitable utensils shall be used by employees or provided for consumers self-service to avoid unnecessary contact with food. Between uses during service, utensils shall be:

(a) Stored in food containers with the food they are being used to serve; or

(b) Stored clean and dry; or

(c) Stored in running water; or

(d) In the case of dispensing utensils and malt collars used in serving frozen desserts, stored either in a running water dipper well, or clean and dry.

(5) Ice for consumer use shall be dispensed only with scoops, tongs, or other ice-dispensing utensils by either employees or self-service or through automatic self-service ice-dispensing equipment. Between uses during service, ice-dispensing utensils and ice receptacles shall be stored in a way that protects them from contamination.

(6) Sugar, condiments, seasonings, and dressings for self-service use shall be provided only in individual packages or from dispensers or containers that protect their contents.

(7) Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding one (1) pint in capacity, or served from an approved bulk milk dispenser. When a bulk dispenser for milk or milk products is not available and portions of less than one-half (1/2) pint are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container of not more than one-half (1/2) gallon capacity.

(8) Cream, half and half, or non-dairy creamers or whitening agents shall be provided in an individual service container, protected pour-type pitcher or drawn from a refrigerated dispenser designed for such service.

(9) Once served to a consumer, individual portions of food shall not be served again. Packaged food, other than potentially hazardous food, that is still packaged and is still wholesome, may be re-served.

Section 10. Food Transportation. During transporta-

tion, food and food utensils shall be in covered containers or completely wrapped or packaged so as to be protected from contamination. During transportation, including transportation to another location for service or catering operations, food shall meet the requirements of this regulation relating to protection and storage of food.

Section 11. Employee Health. No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a food service establishment, except as noted in Section 39 of this regulation.

Section 12. Personal Cleanliness. Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking or using the toilet. Employees shall keep their fingernails clean and trimmed.

Section 13. Clothing. (1) The outer clothing of all employees shall be clean and suitable for the task to be performed.

(2) Hairnets, hats, scarfs, or similar hair coverings shall be required for all employees working in food preparation areas. Employees working in other areas of establishments shall arrange their hair to prevent the contamination of food, equipment and utensils.

Section 14. Employee Practices. (1) Employees shall consume food only in designated dining areas. An area shall not be designated as a dining area if consuming food there might result in contamination of other food, equipment, utensils, or other items needing protection.

(2) Employees shall not use tobacco in any form while engaged in food preparation or service, nor while in equipment or utensil-washing or food preparation areas. Employees shall use tobacco in any form only in designated areas. An area shall not be designated for that purpose if the use of tobacco there might result in contamination of food, equipment, utensils, or other items needing protection.

(3) Employees shall handle soiled tableware in a way that minimizes contamination of their hands.

(4) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices.

(5) Employees shall remove all insecure jewelry, and during periods when food is manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

Section 15. Equipment and Utensils Materials. (1) Multi-use equipment and utensils shall be made and repaired with safe materials, including finishing materials; shall be corrosion resistant and shall be nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils and single-service articles shall not impart odors, color or taste, nor contribute to the contamination of food.

(2) If soft solder or hard solder (silver solder) is used, it shall be composed of safe materials and be corrosion resistant.

(3) Hard maple or equivalently nonabsorbent materials that meet the general requirements set forth in subsection (1) of this section may be used for cutting blocks, cutting boards, salad bowls, and bakers' tables. The use of wood as a food-contact surface under other circumstances is pro-

hibited, except in the case of single service articles such as chopsticks, coffee stirrers, ice cream spoons and similar articles.

(4) Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in subsection (1) of this section are permitted for repeated use. The use of equipment and utensils made of materials not meeting the requirements of this section is prohibited.

(5) Mollusk and crustacea shells may be used only once as a serving container. Further re-use of such shells for food service is prohibited.

Section 16. Equipment and Utensils Design and Fabrication. (1) All equipment and utensils, including plasticware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult to clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills and skillets. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited, except that in equipment, such as ice makers or hot oil cooking equipment and hot oil filtering systems, the use of such threads shall be minimized.

(2) Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.

(3) Sinks, dish tables, and drain boards shall be self-draining.

(4) Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

(a) Without being disassembled; or

(b) By disassembling without the use of tools; or

(c) By easy disassembling with the use of only simple tools kept available near the equipment, such as a mallet, a screwdriver, or an open-end wrench.

(5) Pipes, tubes, valves, and lines contacting food and intended for in-place cleaning shall be so designed and fabricated that:

(a) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and

(b) Cleaning and sanitizing solutions will contact all interior food-contact surfaces; and

(c) The system is self-draining or capable of being completely evacuated.

(6) Thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled, and accurate to plus or minus three (3) degrees Fahrenheit.

(7) Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated so as to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

(8) Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto food-contact surfaces. Filters where used, shall be readily removable for cleaning and replacement.

Section 17. Equipment Installation and Location. (1) Equipment, including ice makers and ice storage equipment, shall not be located under exposed sewer lines, non-potable water lines, stairwells or other sources of contamination. This prohibition does not apply to automatic fire protection sprinkler heads.

(2) Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or mounted on legs at least four (4) inches high and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

(3) Equipment is portable within the meaning of subsection (2) of this section if:

(a) It is small and light enough to be moved easily by one (1) person; and

(b) It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

(4) Floor-mounted equipment, unless readily movable, shall be:

(a) Sealed to the floor; or

(b) Installed on raised platforms of concrete or other smooth masonry in a way that prevents liquids or debris from seeping or settling underneath, between, or behind the equipment in spaces that are not fully open for cleaning and inspection; or

(c) Elevated on legs at least six (6) inches off the floor, except that vertically mounted floor mixers may be elevated as little as four (4) inches off the floor if no part of the floor under the mixer is more than six (6) inches from cleaning access. Unless sufficient space is provided for easy cleaning between and behind each unit of floor-mounted equipment, the space between it and adjoining equipment units and between it and adjacent walls shall be closed or, if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls.

(5) Aisles and working spaces between units of equipment and between equipment and walls should be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.

(6) Equipment which was installed prior to the effective date of this regulation and which does not meet fully all of the requirements of this section, shall be deemed acceptable, if it is in good repair, capable of being maintained in a sanitary condition and the food-contact surfaces are non-toxic. Such equipment shall be so located and installed as to enable reasonable compliance with the requirements of this section.

Section 18. Equipment and Utensil Cleaning and Sanitization. (1) Tableware shall be cleaned and sanitized after each use.

(2) Kitchenware and food-contact surfaces of equipment used in the preparation, service, display or storage of potentially hazardous foods shall be cleaned and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

(3) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food-

contact surfaces of equipment shall be cleaned and sanitized at intervals throughout the day on a schedule based on food temperature, type of food, and amount of food particle accumulation.

(4) The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day, except that this shall not apply to hot oil cooking and filtering devices and systems. Food contact-surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.

(5) Non-food contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

(6) Cloths used during service for wiping food spills on food contact surfaces shall be clean, dry, and used for no other purpose. Moist cloths used for wiping food-contact surfaces of equipment shall be clean and rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section. Moist cloths, or sponges, used for cleaning non-food-contact surfaces shall be clean and used for no other purpose. These cloths shall be rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section.

(7) When manual cleaning and sanitizing is used, sinks shall be cleaned prior to use. Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil. Equipment and utensils shall be thoroughly washed in a hot detergent solution in the first compartment, rinsed in the second compartment and shall be sanitized in the third compartment according to one (1) of the methods included in paragraph (a)1 through 4.

(a) All tableware and the food-contact surfaces of all other equipment and utensils shall be sanitized by:

1. Immersion for at least one-half (1/2) minute in clean, hot water of a temperature of at least 170 degrees Fahrenheit; or

2. Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite and having a temperature of at least seventy-five (75) degrees Fahrenheit; or

3. Immersion for at least one (1) minute in a clean solution containing at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and having a temperature of at least seventy-five (75) degrees Fahrenheit; or

4. Immersion in a clean solution containing other chemical sanitizing agents approved by the department that will provide the equivalent bactericidal effect of a solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite at a temperature of at least seventy-five (75) degrees Fahrenheit for one (1) minute; or

5. Treatment with steam free from harmful materials or additives in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

6. Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under subsection (7)(a)4 of this section when used for immersion sanitization in the case of equipment too large to sanitize by immersion.

(b) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permit-

ted under the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart "B," Substances Utilized to Control the Growth of Microorganisms, Section 178.1010 Sanitizing Solutions, and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

(c) A three (3) compartment sink shall be used if cleaning and sanitization of equipment or utensils is done manually; provided, that existing establishments not having a three (3) compartment sink that can demonstrate an acceptable procedure for cleaning and sanitizing equipment and utensils may be exempt from this requirement by the department. Sinks shall be large enough to permit the complete immersion of the equipment and utensils and each compartment of the sink shall be supplied with hot and cold potable running water. Suitable equipment shall be made available if cleaning and sanitizing cannot be accomplished by immersion.

(d) Dish tables or drain boards of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the dishwashing facilities.

(e) When hot water is used for sanitizing, the following facilities shall be provided and used:

1. An integral heating device or fixture installed in or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170 degrees Fahrenheit; and

2. A numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit convenient to the sink that can be used for frequent checks of water temperature; and

3. Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(8) When mechanical cleaning and sanitizing is used, cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. Such machines and devices shall be properly installed and maintained in good repair. Automatic detergent dispensers and wetting agent dispensers, if any, shall be properly installed and maintained.

(a) The pressure of water supplied to spray-type dishwashing machines shall be not less than fifteen (15) or more than twenty-five (25) pounds per square inch measured in the water line immediately adjacent to the machine. A suitable gauge cock shall be provided immediately upstream from the final rinse sprays to permit checking the flow pressure of the final rinse water.

(b) Easily readable numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided that indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(c) Rinse water tanks shall be so protected by baffles or other effective means as to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles as determined by specifications attached to the machines.

(d) Drain boards shall be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and

constructed as not to interfere with the proper use of the dishwashing facilities.

(e) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to their being cleaned in a dishwashing machine. After flushing, scraping, or soaking, equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are subject to the unobstructed application of detergent wash and clean rinse waters and that permits free draining. Clean rinse water shall remove particulate matter and detergent residues. All dishwashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

(9) When chemicals are used for sanitization, they shall be automatically dispensed in such concentration and for such a period of time as to provide effective bactericidal treatment of equipment and utensils. Wash water shall be kept clean. In machines using chemicals for sanitization (single-tank, stationary-rack, door-type machines, and spray-type glass washers), the temperature of the wash water shall be not less than 120 degrees Fahrenheit. The sanitizing rinse water shall be not less than seventy-five (75) degrees Fahrenheit nor less than the temperature specified by the machine manufacturer.

(10) Where machines using hot water sanitization are used, wash waters and pumped rinse waters shall be kept clean. Water shall be maintained at not less than the temperatures stated in paragraphs (a) to (e) of this subsection; provided, that existing machines not fully meeting the requirements of this subsection may be acceptable, if capable of meeting such time and temperature requirements as are acceptable by the department. Wash and pumped rinse temperatures shall be measured in the respective tanks, and final rinse temperatures shall be measured at the manifold.

(a) Single tank, stationary rack, dual temperature machine:

1. Wash temperature: 150 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(b) Single tank, stationary rack, single temperature machine:

1. Wash temperature: 165 degrees Fahrenheit.
2. Final rinse temperature: 165 degrees Fahrenheit.

(c) Single tank, conveyor machine:

1. Wash temperature: 160 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(d) Multiple tank, conveyor machine:

1. Wash temperature: 150 degrees Fahrenheit.
2. Pumped rinse temperature: 160 degrees Fahrenheit.
3. Final rinse temperature: 180 degrees Fahrenheit.

(e) Single tank, pot, pan, and utensil washer (either stationary or moving rack):

1. Wash temperature: 140 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(11) All equipment and utensils shall be air-dried.

Section 19. Equipment and Utensil Storage. (1) Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, and bowls shall be handled without contact with inside surfaces or with surfaces that contact the user's mouth.

(2) Cleaned and sanitized utensils and movable equipment shall be stored at least six (6) inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust and other means. The food-contact surfaces of fixed equipment shall also be protected

from contamination. Equipment and utensils shall not be placed under exposed sewer or nonpotable water lines. This requirement does not apply to automatic fire protection sprinkler heads.

(a) Utensils shall be air-dried before being stored or shall be stored in a self-draining position on suitably located racks.

(b) Wherever practical, stored utensils shall be covered or inverted. Facilities for the storage of spoons, knives, and forks shall be provided and shall be designed to present the handle to the employee or consumer.

(3) If presetting is practiced, all unprotected, unused, preset tableware shall be collected for washing and sanitizing after the meal period; and after any place at a table is occupied.

(4) Single-service articles shall be stored at least six (6) inches above the floor in closed cartons or containers which protect them from contamination.

(a) Single-service articles shall be commercially packaged for individual use or shall be available to the consumer from a dispenser in a way that prevents contamination of surfaces that may contact food or the user's mouth. Handling of single-service articles in bulk shall be conducted in a way that protects them from contamination. Storage shall not be in toilet rooms or vestibules of toilet rooms nor under nonpotable water lines or exposed sewer lines.

(b) Single-service articles shall be used only once.

Section 20. Sanitary Facilities and Controls. (1) The water supply shall be potable, adequate, and from an approved public supply of a municipality or water district, if available. In the event a public water supply of a municipality or a water district is not available, the supply for a food service establishment shall be developed and approved in accordance with applicable requirements of the Cabinet for Natural Resources and Environmental Protection; provided, however, if a public water supply of a municipality or water district subsequently becomes available, connections shall be made thereto and the private supply shall be discontinued. Hot and cold running water under pressure shall be provided in all areas where food is prepared, or equipment, utensils or containers are washed. Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart "D." Specific Usage Additives Section 173.310 Boiler Water Additives.

(2) Bottled and packaged potable water shall be obtained from a source that complies with all applicable laws and regulations and shall be handled and stored in a way that protects it from contamination. Bottled and packaged water shall be dispensed from the original containers.

(3) All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed water system. Both of these systems shall be constructed of approved materials and operated in accordance with applicable laws and regulations.

Section 21. Sewage. All sewage, including liquid waste, shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated in accordance with the requirements of the Cabinet for Natural Resources and Environmental Protection and the cabinet; provided, however, if a public sewerage system subsequently

becomes available, connections shall be made thereto and the private sewerage system shall be disconnected. Only non-water-carried disposal methods which have been approved by the cabinet for temporary use shall be used and operation of such facilities shall be in conformance with applicable state laws and regulations.

Section 22. Plumbing. (1) All plumbing shall be sized, installed, and maintained in accordance with the State Plumbing Code. There shall be no cross-connection between the safe water supply and any unsafe or questionable water supply, or source of pollution through which the safe water supply might become contaminated.

(2) A nonpotable water system is permitted only for purposes such as air-conditioning and fire protection and only if the system is installed according to applicable state laws and regulations and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(3) The potable water system shall be installed to preclude the possibility of backflow. Devices to protect against backflow and backsiphonage shall be installed at all fixtures and equipment wherever backflow or backsiphonage may occur. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(4) If used, grease traps shall be located to be easily accessible for cleaning.

(5) Except for properly trapped open sinks, there shall be no direct connection between the sewage system and any drains originating from equipment in which food, portable equipment or utensils are placed.

Section 23. Toilet Facilities. (1) In existing food service establishments, adequate toilet facilities shall be provided and shall be so located as to be readily accessible to employees at all times. In new establishments, or establishments that are extensively altered, toilet facilities shall be provided in accordance with the requirements of the State Plumbing Code.

(2) Toilets and urinals shall be designed to be easily cleanable.

(3) Toilet room doors shall be solid, tight-fitting, and self-closing, and shall be closed except during cleaning or maintenance. Doors may be louvered if installed in accordance with [to] the State Fire Marshal's regulations.

(4) Toilet facilities, including vestibules, if any, shall be kept clean and in good repair and free of objectionable odors. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials, and the receptacles in toilet rooms used by women shall be covered.

Section 24. Lavatory Facilities. (1) Lavatories shall be installed in accordance with the State Plumbing Code and shall be equipped with hot and cold running water or running water tempered by means of a mixing valve or combination faucet. Steam mixing valves are prohibited. Hand cleansing soap or detergent, and approved sanitary towels or other approved hand drying devices are to be conveniently located at each lavatory. If disposable towels are used, waste receptacles shall be located near the lavatory. Common towels are prohibited.

(2) Lavatories shall be located within or immediately adjacent to all toilet rooms. In all new establishments, and establishments which are extensively altered, lavatories

shall be conveniently located within the food preparation area and dishwashing area. Sinks used for food preparation or for washing equipment or utensils shall not be used for handwashing.

(3) Lavatories, soap dispensers, and hand drying devices and all related facilities shall be kept clean and in good repair.

Section 25. Garbage and Refuse. (1) Garbage and refuse shall be kept in durable insect-proof and rodent-proof containers that are leakproof and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and may be used for storage inside the food service establishment when protected from insects and rodents.

(2) Containers, compactors, and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered when not in actual use. Drain plugs, where required, shall be in place at all times, except during cleaning.

(3) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

(4) After being emptied, each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food-preparation areas. In new establishments, suitable facilities, including hot water and detergent, shall be provided and used for washing containers.

(5) The garbage and refuse on the premises shall be stored in a place inaccessible to insects and rodents. Outside storage of plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

(6) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent-proof, and shall be large enough to store the garbage and refuse containers that accumulate.

(7) Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

(8) Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(9) Where garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter in accordance with applicable regulations of the Cabinet for Natural Resources and Environmental Protection. Areas around incineration facilities shall be kept clean and orderly.

Section 26. Insect and Rodent Control. (1) Effective measures intended to eliminate the presence of rodents and flies, roaches, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

(2) Openings to the outside shall be effectively protected against the entrance of rodents and shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, and other

openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than sixteen (16) mesh to one (1) inch.

Section 27. Construction and Maintenance of Physical Facilities. (1) The floors of all food preparation, food storage, and utensil-washing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, and toilet rooms and vestibules shall be constructed of smooth, durable materials such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair.

(2) Carpeting, if used, shall be properly installed, easily cleanable and maintained in good repair. Carpeting is prohibited in toilet rooms, food preparation areas, and in equipment-washing and utensil-washing areas where it would be exposed to large amounts of grease and water.

(3) Sawdust, wood shavings, peanut hulls, or similar material on the floors in food processing areas is prohibited.

(4) Properly installed floor drains shall be provided in floors that are water flushed for cleaning or that receive discharge of water or other fluid waste from equipment. Such floors shall be constructed of sealed concrete, terrazzo, ceramic tile, or similar material graded to drain all parts of the floor.

(5) The floor of each walk-in refrigerator shall be graded to drain all parts of the floor to the outside through a waste pipe, doorway, or other opening, or equipped with a floor drain.

(6) Mats and duckboards shall be of nonabsorbent, grease resistant materials and of such size, materials, design, and construction as to facilitate their being easily cleaned. Duckboards shall not be used as storage racks.

(7) In all new establishments utilizing concrete, terrazzo, ceramic tile or similar material, and where water flush cleaning methods are used, junctures of walls with floors shall be coved and sealed. In all other cases, the junctures between the walls and floors shall not present an open seam of more than one thirty-second ($1/32$) of an inch.

(8) Utility service lines and pipes shall not be unnecessarily exposed on floors in food preparation and utensil-washing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(9) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

(10) The walls, including nonsupporting partitions, wall coverings, and ceilings of all food preparation and utensil-washing areas and of toilet rooms shall be smooth, nonabsorbent, and easily cleanable. The use of rough or unfinished building materials such as brick, concrete blocks, wooden beams, or shingles is prohibited in those locations except by special plan approval by the cabinet.

(11) Studs, joists, and rafters shall not be exposed in walk-in refrigerators, food preparation areas, equipment and utensil washing areas and in toilet rooms except by special plan approval by the cabinet.

(12) Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in food preparation and utensil-washing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(13) Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to

walls and ceilings shall be easily cleanable and shall be maintained in good repair.

(14) Covering material such as sheet metal, linoleum, vinyl, and similar materials shall be easily cleanable and nonabsorbent and shall be attached and sealed to the wall and ceiling surfaces so as to leave no open spaces or cracks.

(15) Concrete or pumice blocks used for interior wall construction shall be finished and sealed to provide an easily cleanable surface.

Section 28. Cleaning Physical Facilities. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with push brooms. All cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after closing or between meals. In new establishments, or establishments that are extensively altered, readily accessible service sinks or curbed cleaning facilities shall be provided.

Section 29. Lighting. (1) At least thirty (30) footcandles of natural or artificial light shall be provided to all working surfaces and to all other surfaces and equipment in food preparation, utensil-washing, and hand washing areas, and in toilet rooms. At least twenty (20) footcandles of light at a distance of thirty (30) inches from the floor shall be provided in all walk-in refrigerators, food storage areas and dining and entry areas, except that this requirement applies to dining areas only during cleaning operations.

(2) Shielding to protect against broken glass falling into food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service and display facilities and facilities where utensils and equipment are cleaned and stored. Shatter-proof bulbs may be approved by the cabinet without further shielding. Heat lamps shall be protected by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

Section 30. Ventilation. (1) All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, smoke and fumes. Ventilation systems shall be installed and operated according to applicable state laws and regulations and, when vented to the outside, shall not create an unsightly, harmful, or unlawful discharge.

(2) Rooms, including toilet room areas, and equipment, from which aerosols, obnoxious odors, or noxious fumes or vapors may originate shall be vented effectively to the outside.

(3) Intake air ducts, if any, shall be designed and maintained to prevent the entrance of dust, dirt, insects and other contaminating materials.

Section 31. Dressing Areas and Lockers. (1) If employees routinely change clothes within the establishment, areas shall be designated for that purpose. Those areas shall not be located in areas used for food preparation, storage, or service or for utensil-washing or storage, except that a storage room containing only completely packaged food may be so designated.

(2) Enough lockers or other suitable facilities shall be provided and used for the storage of employees' clothing and other belongings. If dressing areas are designated, the lockers or other facilities shall be located within those areas.

Section 32. Poisonous or Toxic Materials. (1) Only those poisonous or toxic materials required to maintain the establishment in a sanitary condition or required for sanitization of equipment or utensils shall be present in food service establishments.

(2) Containers of poisonous or toxic materials, including insecticides and rodenticides, shall be prominently and distinctly labeled for easy identification of contents.

(3) Poisonous or toxic materials consist of the following three (3) categories:

(a) Pesticides, which include insecticides, rodenticides, herbicides, and fungicides;

(b) Detergents, sanitizers, and related cleaning and drying agents; and

(c) Caustics, acids, polishes and other chemicals. Each of these three (3) categories shall be stored and located to be physically separated from each other. All poisonous and toxic materials shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose. To preclude potential contamination, poisonous or toxic materials shall not be stored above or with food, food equipment, utensils, or single service articles, except that this requirement does not prohibit the convenient availability of detergents or sanitizers at utensil or dishwashing stations.

(4) Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces, or in a way that constitutes a hazard to employees or other persons.

(5) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons nor in a way other than in full compliance with the manufacturer's labeling.

(6) Personal medications shall not be stored in food storage, preparation, or service areas.

(7) First-aid supplies shall be stored in a way that prevents them from contaminating food and food contact surfaces.

Section 33. Premises. (1) Food service establishments and all parts of the property used in connection with operation of the establishment shall be kept free of litter.

(2) The walking and driving surfaces of all exterior areas of food service establishments shall be surfaced with concrete or asphalt or with gravel or similar material effectively treated to facilitate maintenance and to minimize dust. These surfaces shall be drained and shall be kept clean.

(3) Only articles necessary to the operation and maintenance of the food service establishment shall be stored on the premises.

(4) The traffic of unnecessary persons through the food preparation and utensil-washing areas and the presence in those areas of persons not authorized to be there by the permit holder or person in charge is prohibited.

(5) No operation of a food service establishment shall be conducted in any room used as living or sleeping quarters. A solid self-closing door shall separate food service operations from any living or sleeping area.

(6) No laundry operation shall be conducted, except that linens, uniforms and aprons used in the establishment may be laundered on the premises separate from food preparation and service areas.

(7) Clean cloths and napkins shall be stored in a clean place and protected from contamination until used. Nonabsorbent containers or washable laundry bags shall be provided and damp or soiled linens and cloths shall be kept in them until removed for laundering.

(8) Maintenance and cleaning materials and equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linen storage.

(9) Live animals, including birds and turtles, shall be excluded from all food service establishments and from areas adjacent to serving areas that are under the control of the permit holder. The exclusion does not apply to edible crustacea, shellfish, or fish, nor to fish in aquariums. Escorted police patrol dogs or guide dogs accompanying blind persons shall be permitted in dining areas.

Section 34. Mobile Food Units or Pushcarts. (1) Mobile units or pushcarts shall comply with the requirements of this regulation, except as otherwise provided in this subsection and in subsection (2) of this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the food service establishment as a mobile or pushcart operation, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this regulation relating to physical facilities, except those requirements of subsections (4) and (5) of this section and Sections 35 and 36.

(2) A mobile unit or pushcart that serves only food that was prepared, packaged in individual servings, transported, and stored under conditions meeting the requirements of this regulation or beverages that are not potentially hazardous and are dispensed from protected equipment need not comply with requirements of this regulation pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its commissary; however, frankfurters may be prepared and served from these units or pushcarts.

(3) Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

(4) A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning, and sanitization, and handwashing, in accordance with the requirements of this regulation. The water inlet shall be located in such a position that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed according to the State Plumbing Code.

(5) If liquid waste results from operation of a mobile food unit it shall be stored in permanently installed retention tanks that are at least fifty (50) percent larger than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the food unit. The waste connection shall be located below the water connection to preclude contamination of the potable water system.

Section 35. Commissary. Mobile food units or pushcarts shall operate from a commissary or other fixed food service establishment that is constructed and operated in compliance with this regulation; provided, however, mobile food service units equipped with a potable water supply system under pressure, liquid waste system retention tanks, sinks, lavatories, etc., shall not be required to

operate from a commissary or other fixed food service establishment.

Section 36. Mobile Food Unit or Pushcart Servicing Area and Operations. (1) Potable water servicing equipment shall be stored and handled in a way that protects the water and equipment from contamination.

(2) The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. The flushing and draining area for liquid wastes shall be separate from the area used for loading and unloading of food and related supplies. All sewage and waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated in accordance with the requirements of the Cabinet for Natural Resources and Environmental Protection and the cabinet; provided, however, if a public sewerage system subsequently becomes available, connection shall be made thereto and the establishment sewerage system shall be disconnected.

Section 37. Temporary Food Service Establishment. (1) A temporary food service establishment shall comply with the requirements of this regulation, except as otherwise provided in this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this regulation, except those requirements of subsections (2) to (10) of this section.

(2) Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters, which require seasoning and cooking, shall be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish is prohibited. This prohibition does not apply, however, to any potentially hazardous food that is obtained in individual servings, is stored at a temperature of forty-five (45) degrees Fahrenheit or below, or at a temperature of 140 degrees Fahrenheit or above, and is served directly in the unopened container in which it was packaged.

(3) Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of this regulation. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use foodgrade plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until used, and when used, it shall be dispensed in a way that protects it from contamination.

(4) Equipment shall be located and installed in a way that facilitates cleaning the establishment and that prevents food contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where necessary to prevent contamination, effective shields for such equipment shall be provided.

(5) Enough potable water shall be available in the establishment for cleaning and sanitizing utensils and equipment and for handwashing. Enough hot water for these purposes shall be provided.

(6) The storage of packaged food in contact with water or undrained ice is prohibited, except that cans or bottles

of nonpotentially hazardous beverages may be so stored when the water contains at least fifty (50) parts per million of available chlorine and is changed often enough to keep both the water and containers clean.

(7) Liquid waste shall be disposed of in such a manner as not to create a public health hazard or nuisance.

(8) A facility shall be provided for employee hand-washing. Where water under pressure is unavailable, such facility shall consist of a pan, warm water, hand cleanser, and individual paper towels.

(9) Floors shall be made of concrete, tight wood, asphalt, or other similar cleanable material, except that dirt or gravel floors may be used if graded to preclude the accumulation of liquids and covered with removable, cleanable platforms or duckboards.

(10) Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Screening material used for walls shall be at least sixteen (16) mesh to the inch. Counter service openings shall not be larger than is necessary for the particular operation conducted. When flies are prevalent, counter-service openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Doors and windows, if any, shall be kept closed, except when food is being served.

Section 38. Plan Review of Future Construction. When a food service establishment is hereafter constructed or extensively remodeled, or plumbing relocated, or additional plumbing added, or when an existing structure is converted for use as a food service establishment, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangements, size, location and type of facilities and a plumbing riser diagram shall be submitted to the cabinet for approval before such work is begun.

Section 39. Procedure When Infection is Suspected. When the cabinet has reasonable cause to suspect possibility of disease transmission from any food service establishment employee, it may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The cabinet may require any or all of the following measures:

(1) The immediate exclusion of the employee from all food service establishments;

(2) The immediate closing of the food service establishment concerned until, in the opinion of the cabinet, no further danger of disease outbreak exists;

(3) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;

(4) Adequate medical and laboratory examinations of the employee, of other employees, and of his and their body discharges.

Section 40. Enforcement Provisions. (1) Whenever the cabinet has substantial reason to believe that an imminent public health hazard exists, or whenever the permit holder or an authorized agent thereof has interfered with the cabinet in the performance of its duties, after its agents have duly and officially identified themselves, or if an inspection of an establishment reveals a rating score of less than sixty (60), the permit shall be suspended immediately upon notice to the permit holder without a hearing. In such event, the permit holder may request a hearing which shall

be granted as soon as practical, or in any event not to exceed seven (7) days.

(2) In all other instances of violation of the provisions of this regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violations and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this regulation, the cabinet may suspend the permit, provided that the permit holder or operator is notified in writing that the permit shall be suspended at the end of five (5) days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the permit holder, within such five (5) day period.

(3) Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the reinspection reveals that the conditions causing suspension of the permit have been corrected, the permit shall be reinstated.

(4) For serious or repeated violations of any of the requirements of this regulation, or for interference with the cabinet in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of five (5) days following service of such notice, unless a request for a hearing is filed with the cabinet, by the permit holder, within such five (5) day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(5) Notices provided for under this regulation shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder.

(6) The hearings provided for in this regulation shall be conducted by the cabinet at a time and place designated by it. Based upon the record of such hearing, the cabinet shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A transcript of the hearing need not be made unless the interested party assumes the costs thereof and a request is made therefor at the time a hearing is requested.

(7) At least once every six (6) months, the cabinet shall inspect each food service establishment and shall make as many additional inspections and reinspections as are necessary for the enforcement of this regulation.

(8) Whenever an inspection is made of a food service establishment, the findings shall be recorded on the inspection report form provided for that purpose, and shall constitute a written notice to the permit holder. The original of the inspection report shall be furnished to the permit holder or person in charge. The inspection report form shall summarize the requirements of this regulation and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point value for all violations, subtracted from 100.

(9) The inspection report form shall specify a specific

and reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

(a) When the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

(b) When the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, within a period not to exceed thirty (30) days.

(c) Regardless of the rating score of the establishment, all violations of four (4) or five (5) point weighted items shall be corrected within a time specified by the cabinet but in any event, not to exceed ten (10) days.

(d) When the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit. The permit shall be suspended within five (5) days after receipt of such notice unless a written request for a hearing is filed with the cabinet, by the permit holder, within such five (5) day period.

(e) In the case of temporary food service establishments, all violations shall be corrected within a specified period of time not to exceed twenty-four (24) hours. If violations are not so corrected, the permit shall be immediately suspended. In such event the permit holder may request a hearing which shall be granted as soon as practical.

(f) The report of inspection shall state that failure to comply with any time limits for corrections shall result in suspension of permit and that an opportunity for appeal from any notice or inspection findings will be provided if a written request for hearing is filed within five (5) days. If a request for hearing is received, a hearing shall be held at a time and place designated by the cabinet.

(g) Whenever a food service establishment is required under the provisions of this regulation to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time, but in no event to exceed seven (7) days.

[(10) Subsections (7) and (9)(a), (b), (c), (d) and (e) of this section do not apply to food service establishments operated in conjunction with health care facilities and day care centers.]

[Section 41. Special Enforcement Provisions for Health Care Facilities and Day Care Centers. (1) Where required by regulations promulgated pursuant to KRS Chapter 216B, the cabinet's Division for Licensing and Regulation shall conduct inspections of food service establishments operated in conjunction with health care facilities.]

[(2) Day care centers shall comply with the provisions of KRS 199.894 and 199.896 and 905 KAR 2:010 that relate to the preparation and serving of food in day care centers and the cabinet's Division for Licensing and Regulation shall conduct inspections of the food service facilities in such centers.]

[(3) The Division for Licensing and Regulation shall conduct routine inspections in conjunction with the annual inspections for licensure and conduct as many additional inspections as are necessary for the enforcement of this regulation. Complaint investigations may be conducted at any time.]

[(4) The permit holder or operator of the facility shall be

notified in writing of any violations found during the inspection visit and a written plan for the correction of the violations shall be submitted to the Division for Licensing and Regulation within a specified time.]

[(5) The report of the annual inspection visit shall be posted in a conspicuous place within the facility.]

Section 41. [42.] Examination and Detention of Foods. The cabinet may examine and collect samples of foods as often as necessary for the enforcement of this regulation. The cabinet shall, upon written notice to the permit holder or authorized agent specifying the reason therefor, place under quarantine any food which it has probable cause to believe is adulterated or misbranded within the meaning of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215 and 217.992.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 8, 1984

FILED WITH LRC: August 9, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the auditorium of the Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify the following office in writing by September 16, 1984: R. Hughes Walker, General Counsel, Office of the Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Irving Bell

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: Same.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None.

(2) Effects on the promulgating administrative body:

- (a) Direct and indirect costs or savings:
 1. First year: Same.
 2. Continuing costs or savings: Same.
 3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Same.

(3) Assessment of anticipated effect on state and local revenues: Revenues will increase approximately \$40,000 in calendar year 1985.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Administrative Order No. HB84-16 directs the transfer of inspection services from Licensing and Regulation to Health Services and directs the department to change the regulation to reflect that directive.

Tiering:

Was tiering applied? Yes.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

904 KAR 5:070. Separation for cause; reports.

RELATES TO: KRS 341.370, 341.530 [341.115]

PURSUANT TO: KRS 13A.100 [13.082], 194.050, 341.115

NECESSITY AND FUNCTION: This regulation requires the employing unit to notify the division of a worker's separation from employment for cause by returning notices sent to the employer after an initial or reopened claim for benefits has been filed.

Section 1. When an initial claim for benefits is filed by a claimant or when a reopened claim for benefits is filed by a claimant who has been employed since last claiming benefits, the Division of [for] Unemployment Insurance shall immediately notify such claimant's most recent employer of such filing on Form UI-412-A. If such claimant has worked for his next most recent employer in less than ten (10) weeks, the division will also notify his next most recent employer of the claim filing on Form UI-412-A. If the claimant worked for neither his most recent nor next most recent employer in each of ten (10) weeks, the most recent employer for whom the claimant worked in each of ten (10) weeks, back to the beginning of the base period, will be notified of such filing on Form UI-412-A. If such claimant was separated from any notified [such] employer's employ for a reason other than lack of work, the employer shall complete such form and return the "employer's notice of initial claim" or "employer's notice of reopened claim" to the local office indicated thereon.

[Section 2. When a reopened claim for benefits is filed by a claimant and the claimant has been employed since last claiming benefits, the division shall immediately notify such claimant's most recent employer of such filing on Form UI-412-B. If such claimant was separated from such employer's employ for a reason other than lack of work, the employer shall complete such form, and return the "employer's notice of reopened claim" to the local office indicated thereon.]

JAMES P. DANIELS, Commissioner
 E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 14, 1984

FILED WITH LRC: August 15, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels

(1) Type and number of entities affected: None.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None.

(3) Assessment of anticipated effect on state and local revenues: None.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: Merely deleting obsolete reference to form; bringing regulations in line with existing procedures.

Tiering:

Was tiering applied? No. No impact involved.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

904 KAR 5:080. Reasonable time for protesting claim.

RELATES TO: KRS 341.370(4), 341.530(3)

PURSUANT TO: KRS 13A.100 [13.082], 194.050, 341.115

NECESSITY AND FUNCTION: This regulation defines the term "reasonable time" within which an employer must protest a claim by a former worker. A non-most recent employer is now given fifteen (15) days within which to protest if he has not received Form UI-412-A, "employer's notice of initial claim" or "employer's notice of reopened claim" instead of ten (10).

Section 1. Except as provided in Section 2 of this regulation the reasonable time referred to in KRS 341.370(4) and 341.530(3) shall not extend beyond ten (10) days after the date of first notice to the employer from the division that a claim has been filed. In computing such ten (10) day period, the day following the date of mailing of such notice shall be considered the first day, and the date the employer's return notice is delivered to a representative of the division or deposited in the mail, as indicated by the postmark thereon, shall be considered the date it is received by the division.

Section 2. In the event the employer is not the worker's most recent employer and has not received Form UI-412-A [or UI-412-B] as provided in 904 KAR 5:070, the reasonable time referred to in KRS 341.530(3) shall not extend beyond fifteen (15) days after the date of first notice to the employer from the division that a claim has been filed. In computing such fifteen (15) day

period the day following the date of mailing of such notice shall be considered the first day, and the day the employer's return notice is delivered to a representative of the division or deposited in the mail, as indicated by the postmark thereon, shall be considered the date it is received by the division.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 14, 1984

FILED WITH LRC: August 15, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels

(1) Type and number of entities affected: Employers; approximately 90,000 per year.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Complete and return claim filing notice if separation was for reason other than lack of work.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Handling protests to claims filed.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. 1) Procedure already in effect. 2) All impacted employers treated equally.

CABINET FOR HUMAN RESOURCES Department for Employment Services Division of Unemployment Insurance (Proposed Amendment)

904 KAR 5:090. Labor dispute or strike; notification.

RELATES TO: KRS [341.090,] 341.360

PURSUANT TO: KRS 13A.100 [13.082], 194.050, 341.115

NECESSITY AND FUNCTION: This regulation requires the employer to notify the division when a labor dispute or strike begins and [or] ends.

Section 1. When an initial claim for benefits or a reopened claim for benefits is filed by a claimant, the Division of [for] Unemployment Insurance shall immediately notify such claimant's most recent employer of such filing on Form UI-412-A [or UI-412-B]. If such claimant is unemployed because of a strike or other bona fide labor dispute the employer, in addition to the notice required under KRS 341.360(1) [(3)], shall indicate on such form the reason for such claimant's unemployment and return said form to the division within *ten (10)* [seven (7)] days after the date appearing thereon as the date of mailing. In computing such *ten (10)* [seven (7)] day period the day following the date of mailing of the notice shall be considered the first day, and if the *tenth* [seventh] day falls on a day during which the division's office is closed, the next day thereafter on which such office is open shall be considered the *tenth* [seventh] day.

Section 2. Within *ten (10)* [seven (7)] days after the termination of such alleged strike or labor dispute the employer shall notify the division in writing of such termination. In computing such *ten (10)* [seven (7)] day period the day following the termination of such alleged strike or labor dispute shall be considered the first day, and if the *tenth* [seventh] day falls on a day during which the division's office is closed, the next day thereafter on which such office is open shall be considered the *tenth* [seventh] day.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 14, 1984

FILED WITH LRC: August 15, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels

(1) Type and number of entities affected: None.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None.
(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None.

(3) Assessment of anticipated effect on state and local revenues: None.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. No impact involved; merely correcting technical inaccuracies.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

904 KAR 5:160. Unemployment insurance fund payments.

RELATES TO: KRS 341.500, 341.510

PURSUANT TO: KRS 13A.100 [13.082], 194.050, 341.115

NECESSITY AND FUNCTION: This regulation sets the procedure to be used between the Division of [for] Unemployment Insurance, the Treasurer of the Unemployment Insurance Fund, the *Finance and Administration Cabinet* [Department for Finance] and the Secretary of the *Cabinet* [Department] for Human Resources for the certification of checks to be written and paid for benefits under the program.

Section 1. All transfers to the state's account in the Unemployment Trust Fund or refund payments made from the clearing account shall be made by the treasurer of the unemployment insurance fund immediately upon receipt of a written order for such action signed by the Director of the Division of [for] Unemployment Insurance or such other person as may be designated by the commission and approved by the Secretary of the *Cabinet* [Department] for Human Resources.

Section 2. Requisitions from the state's account in the unemployment trust fund shall be made by the said treasurer within twenty-four (24) hours after the receipt of a written order for such requisition signed by the Director of the Division of [for] Unemployment Insurance or such other person as may be designated by the commission and approved by the Secretary of the *Cabinet* [Department] for Human Resources. Such withdrawals, when effected, shall immediately be deposited in the benefit account.

Section 3. (1) A computerized tape [All vouchers] for

the payment of benefits shall be prepared [on Form UI-419] and certified as correct to the *Finance and Administration Cabinet* [Department of Finance] on Form *DOA-19* [DES-500] by the Director of the Division of [for] Unemployment Insurance or such other person as may be designated by the commission and approved by the Secretary of the *Cabinet* [Department] for Human Resources. Such vouchers shall show:

(a) Claimant's name;

(b) Claimant's Social Security Account Number;

(c) Amount of payment to be made;

(d) The compensable period for which payment is made;

(e) The serial number and the date of issuance;

[(f) The name of the depository bank against which they are drawn;] and

(f) [(g)] Such other information that from time to time shall be deemed necessary for proper control.

(2) After approval by the *Secretary* [Commissioner] of the *Finance and Administration Cabinet* [Department for Finance], such vouchers shall be presented to the treasurer of the unemployment insurance fund. Upon presentation, the treasurer shall cause his signature to be affixed to such vouchers and they shall become a demand upon the depository bank for payment of the amounts specified thereon.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 14, 1984

FILED WITH LRC: August 15, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels

(1) Type and number of entities affected: None.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None.

(3) Assessment of anticipated effect on state and local revenues: None.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. No impact involved; procedure already in place.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

904 KAR 5:200. Financing benefits for state employees.

RELATES TO: KRS 341.282, 341.275

PURSUANT TO: KRS 13A.100 [13.082], 194.050, 341.115

NECESSITY AND FUNCTION: This regulation provides for the financing of unemployment insurance benefits for state employees.

Section 1. State departments, agencies and institutions for which service in covered employment is performed shall be billed by the Division of [for] Unemployment Insurance quarterly for the amount of regular benefits and 100% [one-half (1/2)] of the extended benefits paid attributable to such service [in the same manner as is provided in KRS 341.275(3) for non-profit organizations].

Section 2. Payment of such bill shall be made by such department, agency, or institution within thirty (30) days of such billing to the Treasurer, Kentucky Unemployment Insurance Fund, Frankfort, Kentucky 40621 [40601].

JAMES P. DANIELS, Commissioner
 E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 14, 1984

FILED WITH LRC: August 15, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels

(1) Type and number of entities affected: Reimbursing employers, thousands per year.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects up on competition): None

(b) Reporting and paperwork requirements: None.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None.

(3) Assessment of anticipated effect on state and local revenues: None.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. 1) Procedure already in effect; 2) all reimbursing employers treated equally.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

904 KAR 5:260. Unemployment insurance procedures.

RELATES TO: KRS 341.005 through 341.990

PURSUANT TO: KRS 13A.100, 194.050(1), 341.115

NECESSITY AND FUNCTION: Title III of the Social Security Act authorizes the states to implement an unemployment insurance program. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the procedures required to administer the unemployment insurance program in accordance with applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of the unemployment insurance program as authorized by Title III of the Social Security Act and KRS Chapter 341, the following operating manuals are adopted by reference:

(1) Unemployment Insurance Local Office Manual as issued February 1984 and last revised July 13 [June 21], 1984[, to include in Sections 2020 and 3060, respectively, procedures for completion of the initial payorder card and data change requests]. This manual includes procedures: for requiring proper identification of persons filing claims for benefits; for taking and processing initial, additional, reactivated and continued claims for benefits; for assigning claimants to the appropriate group for the eligibility review program; for conducting benefit rights interviews; for processing payorder cards for payment; for correcting and changing benefit data; for registering claimants for work; for conducting the eligibility review program; for stopping and releasing payment of benefits; for entering claim history and

benefit payment information into the data base; for taking and processing interstate claims, combined wage claims, claims by former federal employees and ex-service-members, and claims for extended benefits and federal supplemental compensation benefits; for conducting investigations and issuing determinations regarding a claimant's separation, ability to work, availability for work, active search for work, benefit entitlement, and deductions from benefits; for processing employers' protests to claims; for taking requests for reconsideration of monetary eligibility; for establishing benefit overpayments and initiating recovery or recoupment by processing partial payment agreements or issuing liens; for initiating action on lost or returned checks; for detecting and initiating recovery of fraudulent overpayments; for filing appeals to eligibility determinations; for reporting workload time spent; for compiling claims and nonmonetary determination statistics; and for ranking of local offices based on performance criteria.

(2) *Unemployment Insurance Benefit Branch Procedures Manual* issued May, 1982 and last revised August 3, 1984, [December 1983]. This manual includes procedures for administering the payment of unemployment insurance benefits; for maintaining accounts for all benefit income and expenditures; for detecting, establishing and initiating recovery of benefit overpayments; for assigning benefit charges to employer accounts; for conducting a quality review of nonmonetary determinations affecting the payment of benefits; for processing unemployment claims for former federal employees, ex-service-members, combined wage claimants, interstate claims, claims for Disaster Unemployment Assistance, claims under the Trade Readjustment Act and claims under the Work Incentive Program [program]; for reconsidering monetary rate determinations; for processing payment for lost or returned benefit checks; and for investigating potential fraud and recommendation of recovery action or criminal prosecution.

(3) *Unemployment Insurance Tax Collection and Accounting Branch Manual* issued November, 1982 and last revised August 1, [May] 1984. This manual includes procedures: for setting up, transferring and cancelling employer contribution and reimbursement accounts; for collecting quarterly taxes from contributory employers and for billing reimbursing employers for benefits paid; for auditing quarterly wage and tax reports by making adjustments, assessing additional payment and penalties and crediting tax overpayments; for maintaining records of employer accounts and tax payments; for adjusting wages if required when a reconsideration of monetary benefit eligibility is filed; and for collecting delinquent taxes by filing tax liens, recommending suits and temporary restraining orders, garnishing wages, filing claims in bankruptcy or against monies due to delinquent employers from state agencies.

(4) *Unemployment Insurance Administrative Support Branch Manual* issued December, 1983 and last revised March 1984. This manual includes procedures: for maintaining files of benefit claims, employer records, appeals, and unemployment insurance commission orders; for maintaining mail security operations for all checks received by the division; for gathering statistics and conducting statistical studies; for verifying workload items for the budget process; for publishing statistical reports for the division and for general

publication; for maintaining and distributing federal and state-released procedures; for maintaining all procedures manuals; for conducting the unemployment insurance quality appraisal; for training division personnel; for retaining and disposing of records; for providing data processing liaison services; for preparing state and federal budgets; for operating the Cost Model Management System; for maintaining the Cost Information System; for controlling forms control; and for monitoring purchases, expenditures and repairs.

(5) *Unemployment Insurance Field Audit Manual* issued February 1984 and last revised May 1984. This manual includes procedures for handling matters which cannot be handled directly or expediently by the central office tax branch, such as procedures: for locating employers; for conducting investigations of employers, and their payrolls and employment records; for determining an employer's status under the law; for assessing contributions and collecting delinquent contributions; for serving legal papers; for conducting property investigations; for auditing employer records; and for furnishing technical assistance to employers.

Section 2. Summary of Amendment. (1) Unemployment Insurance Local Office Manual.

(a) Chapter 2000, *Initial Claims*, Sections 2010, 2020, 2060, 2170 and 2240, strike pages 3 and 4, dated 5-18-84; 5 and 6, dated 6-21-84; 7 and 8, dated 6-4-84; 11 through 14, dated 8-16-83; 19 and 20, dated 9-26-83; 29 and 30, dated 2-6-84; and 31 and 32, dated 11-3-83 and substitute in lieu thereof pages 3 through 8, 11 through 14, 19 and 20, and 20 through 32, all dated 7-13-84, which update procedures for: determining how the initial claim is to be prepared based on the length of the claimant's last employment; completing the initial claim for benefits, Form UI-401; informing the claimant during the benefit rights interview that a random investigation of work search contacts will be performed; changing the chargeable employer on an additional claim, when necessary.

(b) Chapter 3000, *Continued Claims*, Sections 3110 and 3160, strike pages 17 and 18, dated 2-6-84 and 23 and 24, dated 8-23-83 and substitute in lieu thereof pages 17, 18, 23 and 24, all dated 7-13-84, which update procedures regarding a random investigation of work search contacts and the eligibility review program.

(c) Chapter 6000, *Examining*, Sections 6015 and 6017, strike pages 8 and 9, dated 7-1-82 and substitute in lieu thereof pages 8, 9 and 9A, dated 7-13-84, which include provisions under which a claimant who is a non-professional employee of an institution of higher education will be disqualified during periods when school is not in session, and conditions under which a claimant will not be disqualified for voluntarily leaving his next most recent employment.

(2) *Unemployment Insurance Benefit Branch Procedures Manual*, Chapter 5000, *Federal Payment Section*, strike pages 1 through 14, dated 5-20-82 and substitute in lieu thereof pages 1 through 13, dated 8-3-84 to clarify procedures for taking, processing and paying claims for Disaster Unemployment Assistance.

(3) *Unemployment Insurance Tax Collections and Accounting Branch Manual*, Chapter 100, *Status*, strike the contents page and pages 1 through 65, dated 11-30-82 and substitute in lieu thereof the contents pages 1 through 5 and pages 1 through 104, all dated 8-1-84, to include stylistic revisions in procedures relating to the operations of the Status and Compliance Unit.

Section 3. [2.] All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621 and in local unemployment insurance offices located throughout the state.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 15, 1984

FILED WITH LRC: August 15, 1984 at 12 noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels

(1) Type and number of entities affected: Unemployment insurance benefit claimants; thousands per year

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: The amendment does not change any process or procedure, hence no impact involved.

Tiering:

Was tiering applied? No. Procedure already in effect; all claimants are to be treated equally under the law.

CABINET FOR HUMAN RESOURCES Department for Employment Services Division of Program Administration and Technical Services (Proposed Amendment)

904 KAR 6:010. Work Incentive Program.

RELATES TO: KRS 194.030(9)

PURSUANT TO: KRS 13A.100, 194.050(1)

NECESSITY AND FUNCTION: Title IV of the Social Security Act and 29 CFR Part 56 authorizes the states to implement the Work Incentive Program. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the Work Incentive Program in accordance with applicable federal laws and regulations.

Section 1. In order to facilitate the administration of the Work Incentive Program as authorized by Title IV of the Social Security Act and as regulated in 29 CFR Part 56, the following CFR and operating manuals are adopted by reference:

(1) Title 29 *Code of Federal Regulations* (CFR) Part 56, as last revised November 30, 1981. This regulation provides implementation procedures for the administration of the Work Incentive Program (WIN), for Aid to Families with Dependent Children (AFDC) recipients, including procedures for: registration, appraisal and certification; supportive and manpower services and protective provisions for WIN recipients; WIN training components and other activities for WIN registrants; and deregistration, sanctions and the WIN adjudication system.

(2) United States Department of Labor, United States Department of Health, and Human Services [, Education and Welfare], Joint Handbook No. 318, the WIN Handbook, issued October, 1979, which describes the roles and responsibilities at the local, state, regional and national level for the Department of Labor and Department of Health and Human Services as well as implementation procedures for: WIN planning and development of a state WIN plan; case and caseload management; exemption determination, registration and appraisal; appraisal, employability planning and certification; providing employment-related social services for WIN registrants, such as child care, medical services, counseling, family planning and other social services; WIN status determinations and appropriate work criteria such as skill training, on-the-job training, work experience, and criteria for assignment to work; processing WIN Employment and Training payments regarding authority to pay, eligibility for payment, payment periods, retention of payment records, recurring payments and non-recurring payments; the WIN adjudication system; and transitions to employment, follow-up, deregistration, tax credits and the WIN reporting system.

(3) The Kentucky Joint WIN Handbook, issued June, 1978 and last revised January, 1984, which is the state manual which describes program roles and responsibilities from the state to national level and includes procedures for: the exemption, determination, registra-

tion and appraisal of an AFDC recipient; certification and providing information for social services available to WIN registrants; WIN status determinations and training components as well as appropriate work and training criteria; the WIN adjudication system, Income Maintenance hearings and deregistrations, including processing complaints and grievances, refusal with or without good cause and appellate procedure; processing WIN training payments and allowances, policy, method of payment, incentive allowances, training-related allowances, overpayments and petty cash procedures; and reporting program activities, welfare grant reductions, records retention and Targeted Jobs Tax Credit for WIN registrants.

[(4) Regional Coordination Committee Operating Memorandum No. 14-83 WIN.]

Section 2. All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621, and in local employment services offices located throughout the state.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 14, 1984

FILED WITH LRC: August 15, 1984 at 12 noon.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, KY 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels

(1) Type and number of entities affected: WIN registrants; thousands per year

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: No change in process or procedure; hence, no impact involved.

Tiering:

Was tiering applied? No. 1) Procedures are already in effect; 2) All WIN registrants are treated equally.

CABINET FOR HUMAN RESOURCES Department for Employment Services Division of Program Administration and Technical Services (Proposed Amendment)

904 KAR 6:020. Weatherization assistance for low income persons.

RELATES TO: KRS 194.030(9)

PURSUANT TO: KRS 13A.100, 194.050(1)

NECESSITY AND FUNCTION: Chapter 42 USC 6861 authorizes the states to implement a weatherization program. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the weatherization program in accordance with applicable federal laws and regulations.

Section 1. In order to facilitate the administration of the weatherization program as authorized by 42 USC 6861 and as regulated in Title 10 CFR Part 440, the following CFR and operating manuals are adopted by reference:

(1) Title 10 *Code of Federal Regulations* (CFR), Part 440, as issued [dated] January 27, 1984, which authorizes states to carry out a program of weatherization assistance for low-income persons established by Chapter 42 United States Code (U.S.C.), 6861.

(2) 1983 Weatherization Manual issued September, 1983 and last revised May 11, 1984, which is provided to subgrantees administering the weatherization program throughout the state and includes an introduction and purpose of the Weatherization Manual, a list of subgrantees and areas served, a copy of 903 KAR 2:010 and implementation procedures for: subgrantee application and contracting; subgrantee contract modification; subgrantee private sector subcontracting; subgrantee financial management; subgrantee program operation; program monitoring and training and technical assistance; and completion and distribution of administrative reports and forms.

(3) Weatherization Assistance Program Specifications and Installations Standards Manual issued October, 1983 and last revised May 25, 1984, which is provided to subgrantees administering the weatherization program throughout the state to establish a common set of general requirements, material standards and installation standards and includes procedures for all measures used in weatherizing a dwelling, such as reducing air infiltration, attic, floor, wall, water heater and pipe and duct insulation, heating system tune-up and installation of storm windows.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621, and in local Community Action Agency offices located throughout the state.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 14, 1984

FILED WITH LRC: August 15, 1984 at 12 noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels

(1) Type and number of entities affected: Non-profit local administrative agencies; 22 community action agencies; one senior citizens center; one local government.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: N/A

Tiering:

Was tiering applied? No.

If no, please explain why tiering was not applied: This program has been in existence since 1977.

CABINET FOR HUMAN RESOURCES Department for Employment Services Division of Research and Planning (Proposed Amendment)

904 KAR 6:040. Job Training Partnership Act.

RELATES TO: KRS 194.030(9)

PURSUANT TO: KRS 13A.100, 194.050(1)

NECESSITY AND FUNCTION: Public Law 97-300, the Job Training Partnership Act authorizes the states to implement a job training program. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the Kentucky Job Training Program in accordance with applicable federal laws and regulations.

Section 1. In order to facilitate the administration of the Job Training Program as authorized by Public Law 97-300 and as regulated in 20 CFR Parts 626 through 638, the following CFR, Public Law and Conference Report are adopted by reference:

(1) Title 20 Code of Federal Regulations (CFR), Parts 626 through 638, dated March 15, 1983, which contains regulations regarding the implementation of the Job Training Partnership Act (JTPA) and includes operational procedures for: determining eligibility of grant recipients and funding; preparing the Governor's Coordination and Special Services Plan; involving the State Job Training Coordinating Council; implementing interstate JTPA agreements; distribution of state funds; ensuring state education coordination and awarding grants; implementing training programs for older individuals; awarding state incentive grants; designating JTPA service delivery areas (SDA) and private industry councils; selection of SDA grant recipients; preparing, reviewing and approving job training plans; prohibiting use of public service employment for JTPA purposes; determining eligibility for need-based payments and benefits and assessing working conditions; ensuring compliance in the areas of grant payments, program income, insurance, procurement, management systems, reporting and recordkeeping, budgetary classifications and limitations, matching funds, property management standards, audits, program oversight, sanctions for Act violations, program closeout and performance standards; filing requests for and conducting grievance hearings; handling of administrative, civil and criminal complaints and reports of fraud, abuse and other criminal activity; and implementing summer youth employment and training programs, Native American employment and training programs, migrant and seasonal farmworker programs and veterans employment programs..

(2) Public Law 97-300, the Job Training Partnership Act of 1982, which concerns the state and local service delivery system and general program and administrative issues including: the authority and program requirements of the governor, state job training coordinating councils, private industry councils and chief elected officials; processes for designating local service delivery areas; preparing local plans and selecting local service providers; development of performance standards and procedures for implementation; fiscal control; monitoring and recordkeeping; training programs for disadvantaged youth and

adults, including the areas regarding funding and eligibility and summer youth training and job programs; implementing training and employment aid program for dislocated workers including consultation with private industry councils; funding and implementation of employment and training programs for Native Americans, migrant workers and veterans; Job Corps; labor market information systems; functions of the National Commission for Employment Policy; and coordination between the Work Incentive Program and the job training delivery system.

(3) Job Training Partnership Act, Conference Report, issued September 28, 1982, which is a joint explanatory statement of the Committee of Conference on the Job Training Partnership Act which explains the action agreed upon by the House and Senate managers and expresses the intent of the Congress.

Section 2. In order to coordinate the Job Training Program and provide for uniform service to the public, the following plan and instructions are adopted by reference:

(1) Governor's Coordination and Special Services Plan, dated May 15, 1984 which contains applicant identifying information, program information for state and local agencies determined to have a direct interest in employment and training and human resource utilization within the state, priorities and criteria for state-supported programs, adjustments in performance standards, modification methods if major changes occur in labor market conditions, funding or other factors covered under the plan.

(2) Information and Instructions for a Request for Proposal (RFP), which includes procedures for the submission of a program request of funding for job training activities under the Job Training Partnership Act, including the purpose, objectives, approach and methodology, length of program, level of support, funding, matching, service providers, performance standards, proposal review outlines, JTPA cost classifications, cost principles for JTPA-funded activities, a list of service delivery areas, administrative entities and Department for Employment Services offices, submission instructions, application instructions and an application form.

Section 3. [2.] All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621, and in local service delivery area offices located throughout the state.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 14, 1984

FILED WITH LRC: August 15, 1984 at 12 Noon.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the Department for Health Service Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, General Counsel, Office of the General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels

(1) Type and number of entities affected: Potentially all Kentucky employees, approximately 25,000 trainees per year.

(a) Direct and indirect costs or savings to those af-

ected: indeterminable, dependent upon voluntary participation

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. No tiering provision.

CABINET FOR HUMAN RESOURCES Department for Employment Services Division of Veteran's Employment Services (Proposed Amendment)

904 KAR 6:050. Veterans' benefits.

RELATES TO: KRS 194.030(9)

PURSUANT TO: KRS 13A.100, 194.050(1)

NECESSITY AND FUNCTION: Title 38, USC authorizes the states to implement veterans' employment and training programs. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the veterans' training and benefit programs in accordance with applicable federal laws and regulations.

Section 1. In order to facilitate the administration of the veterans' programs as authorized by Title 38, USC, and as regulated in 20 CFR Parts 652 and 653, the following CFRs, federal statutes and bulletins are adopted by reference:

(1) Title 20, *Code of Federal Regulations* (CFR) Parts 652 and 653, dated March 30, 1984, which includes implementation procedures for providing veterans and eligible persons the maximum employment and training opportunities with priority given to the needs of disabled veterans and veterans of the Vietnam-era..

(2) Title 38, *United States Code* (USC), Chapter 41, as amended through January 14, 1983, which mandates

the establishment of a job and job training counseling service program, an employment placement service program and a job training placement service program for eligible veterans and other eligible persons and the provision of maximum employment and training opportunities to veterans, with priority given to the needs of disabled veterans and veterans of the Vietnam-era through existing programs, coordination and merger of programs and implementation of new programs.

(3) Veterans Employment Representative (V.E.R.) Bulletins A through 17 which contain implementation procedures for employment services provided to veterans in fulfillment of responsibilities mandated by law.

(4) Federal Contractor Job Listing (F.C.J.L.) Bulletins 1 through 4, which contain updated instructions and procedures for processing Federal Contractor Job Listing under the mandate of Public Law 93-50 requiring federal contractors and subcontractors to list suitable job openings with the appropriate local office of the Department for Employment Services.

(5) Public Law [P.L.] 96-466, The Veterans Rehabilitation and Education Amendments of 1980, which revised the disabled veterans vocational rehabilitation program and established the Disabled Veterans Outreach Program.

(6) Public Law [P.L.] 98-77, the Emergency Veterans' Job Training Act of 1983, which addresses problems of service and continuing unemployment among veterans by providing payments to defray the costs of training and incentives to employers to hire and train certain wartime veterans who have been unemployed for long periods of time for stable and permanent positions that require significant training.

(7) Public Law [P.L.] 97-300, the Job Training Partnership Act, which establishes programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically-disadvantaged individuals and other individuals facing serious barriers to employment who are in special need of such training to obtain productive employment, Title II, Part C of the Act specifically authorizes programs for veterans recently separated from military service, Vietnam-era veterans and disabled veterans.

(8) Title 41, Code of Federal Regulations (CFR), Parts 60-250, dated June 25, 1976, which mandates and provides procedures for ensuring compliance with Section 402 of the Vietnam-era Veterans Readjustment Act of 1974, which requires government contractors and subcontractors to take affirmative action to employ and advance the employment of qualified disabled veterans and veterans of the Vietnam-era.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621, and in local employment services offices located throughout the state.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 14, 1984

FILED WITH LRC: August 15, 1984 at noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Ken-

tucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, KY 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels

(1) Type and number of entities affected: Veterans of armed forces; thousands per year

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

Tiering:

Was tiering applied? No

If no, please explain why tiering was not applied: 1) No impact involved

2) Procedures already in effect

CABINET FOR HUMAN RESOURCES

Department for Social Services

Division of Field Services

(Proposed Amendment)

905 KAR 1:180. DSS policy and procedures manual.

RELATES TO: KRS 194.030(8), 194.060, 199.011 to 199.375, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208 and 209

PURSUANT TO: KRS 194.050, 199.420, 200.080, 209.030

NECESSITY AND FUNCTION: P.L. 97-35, "Block Grants for Social Services--Title XX," authorizes grants to states for social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper ad-

ministration of the cabinet and its programs. The function of this manual is to implement a statewide social services program.

Section 1. DSS Policies and Procedures Manual. For the purpose of implementing and enforcing those sections of the Kentucky Revised Statutes relating to social service programs for children and adults that apply to the Department for Social Services, the Secretary of the Cabinet for Human Resources hereby adopts, by reference, the Department for Social Services' Policy and Procedural Manual as revised through August 15, 1984 [June 11, 1984], as the current policies and procedures of that department. The manual contains policies and procedures relating to management procedures, adult services, support services, family and children's services, and youth services. The Department for Social Services' Policy and Procedures Manual may be reviewed in any departmental field office located in each of the 120 counties or at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky, during regular working hours.

Section 2. Summary of Amendment. (1) Strike Manual Index dated 5/84 and substitute in lieu thereof Manual Index dated 8/84 which updates the Manual Index.

(2) Chapter I, Management Procedures, Section B, Intake, Assessment and Registration, strike pages 11, 12, 13 and 14 dated 6/83 and substitute in lieu thereof pages 11, 12, 13 and 14 dated 8/84 which update procedural instructions for the DSS-1A, client registration, to reflect changes in income eligibility.

(3) Chapter II, Adult Services, Section B, Alternate Care, strike pages 11 and 12 dated 5/84 and substitute in lieu thereof pages 11 and 12 dated 8/84 which change from two (2) days to ten (10) days from the date of decertification for a resident of a long-term care facility to request reconsideration and deletes the definition of hardship recommendations.

(4) Chapter IV, Family and Children's Services, Section A, Child Protective Services, strike pages 14 and 15 dated 6/81 and substitute in lieu thereof pages 14 and 15 dated 8/84 which set forth the criteria for handling reports of suspected abuse/neglect in CHR facilities.

(5) Chapter IV, Family and Children's Services, Section B, Commitment and Termination, strike page 13 dated 3/82, page 14 dated 5/84 and page 15 dated 3/82 and substitute in lieu thereof pages 13, 14, 15 and 15a dated 8/84 which clarify age of majority; requires consideration of a guardian or conservator for physically/mentally handicapped youth six (6) months prior to age of majority; establishes priorities for recruiting guardians; prohibits administrators of long-term care facilities in which the youth reside from being guardian or conservator; provides a model letter to be used to notify the court that the department intends to release a child from commitment; and provides a model letter to be used to notify the court that a child has been released from commitment.

(6) Chapter V, Youth Services, add Section D, Residential Tracking System, pages 1 through 9 dated 8/84 and form DSS-203 dated 9/82 which contain procedural instructions for the completion of DSS-203 which is designed to identify all youth participating in residential services programs.

(7) These changes update the DSS Policy and Pro-

cedural Manual used by staff of the Department for Social Services to provide services for clients.

ANNA GRACE DAY, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 15, 1984

FILED WITH LRC: August 15, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. All staff operate by the same policies and procedures.

CABINET FOR HUMAN RESOURCES

Department for Social Services

Division of Children's Residential Services

(Proposed Amendment)

905 KAR 7:080. Children's treatment services facility manual.

RELATES TO: KRS Chapters 202A and 208

PURSUANT TO: KRS 194.050

NECESSITY AND FUNCTION: P.L. 97-35, Subtitle C, "Block Grants for Social Services Title XX" authorizes grants to states for social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and as are

necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement programs for the care and treatment of mentally ill and/or emotionally disturbed children by the Children's Treatment Service facility operated by the Department for Social Services.

Section 1. Children's Treatment Service Facility Manuals. The Cabinet for Human Resources hereby adopts, by reference, as operating policies and procedures of the Children's Treatment Service, Lakeland Road, Louisville, Kentucky, operated by the Department for Social Services, the following manuals: Policy Manual dated June 16, 1983; Therapeutic Milieu Manual revised through July 23, 1984; [May 11, 1984;] Psychology Procedural Manual dated February 10, 1983; Nursing Manual dated February 10, 1983; Staff Development/Volunteer Procedures Manual revised through July 23, 1984; [May 11, 1984;] Emergency Services Manual revised through May 11, 1984; Safety Rules and Practices revised through May 11, 1984; Pharmacy Manual revised through May 11, 1984; Medical Procedures Manual dated February 10, 1983; The Living Unit Manual revised through July 23, 1984 [dated February 10, 1983]; and Social Services Manual dated February 10, 1983. These manuals set forth the policies and procedures used in the Children's Treatment Services program to provide care and treatment for juveniles residing in this facility. These manuals may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky; and Children's Treatment Service, Lakeland Road, Louisville, Kentucky.

Section 2. Summary of Amendments. (1) In the CTS Therapeutic Milieu Manual strike pages A1-A5 revised January 28, 1983, and substitute in lieu thereof pages A1-A5 revised March 9, 1984, which clarify the use of the phase system, transmit a revised weekly phase point tabulation sheet and revised requirements to qualify for each phase.

(2) In the CTS Living Unit Manual strike pages D32-D36 revised January 28, 1983, and substitute in lieu thereof pages D32-D36 revised through March 9, 1984, which clarify the use of the phase system, transmit a revised weekly phase point tabulation sheet and revised requirements to qualify for each phase.

(3) In the CTS Staff Development Manual add the new label, Staff Development and Volunteer Procedure Manual; add the divider labeled volunteers behind the staff development section and all of the attached material. This addition sets forth the policies and pro-

cedures for the recruitment, training and use of volunteers in the Children's Treatment Services facility.

(4) This amendment updates policies and procedures relating to the phase system and the use of volunteers in the Children's Treatment Services facility.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 15, 1984

FILED WITH LRC: August 15, 1984 at 12 noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. All staff at Children's Treatment Services required to follow uniform policies and procedures.

Proposed Regulations

HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 4:040. Educational institution participation requirements.

RELATES TO: KRS 164.740, 164.748(6), (13)

PURSUANT TO: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority ("Authority") administers programs of student financial assistance. The Authority is empowered by KRS 164.748(6) and (13) to enter contracts with eligible educational institutions to provide for the administration of student financial assistance programs, and approve, disapprove, limit, suspend, or terminate the participation of such institutions. This regulation sets forth the conditions under which the Authority will execute a contract with an educational institution for participation in any or all of the Authority's programs.

Section 1. General Rule. The Authority will execute an Administrative Agreement with any educational institution which meets the eligibility criteria established by KRS 164.740 et seq., KRS 164.780 et seq., and (as applicable to a particular Authority program) the Higher Education Act of 1965 (20 United States Code 1070 et seq.), as amended, and which is approved for participation by the Authority and (as applicable) the United States Secretary of Education ("Secretary"). The Authority will approve for participation in any Authority program and educational institution which:

(1) Demonstrates to the satisfaction of the Authority, in accordance with standards set forth in 34 Code of Federal Regulations part 668, financial responsibility and administrative capability to administer Authority programs of student financial assistance;

(2) Is not presently suspended or terminated from participation in student financial assistance programs by either the Authority or the Secretary;

(3) Holds all licenses, in full force and effect, necessary to transact business in the Commonwealth of Kentucky;

(4) Meets the criteria set forth in Sections 3, 4, 5 and/or 6 of this regulation, as applicable to the particular Authority program(s) in which the educational institution seeks participation; and

(5) Has been in continuous operation for at least two (2) years.

Section 2. Maintenance of Participation. An Administrative Agreement executed pursuant to Section 1 of this regulation shall remain in force, in accordance with its terms, for so long as the educational institution conforms to the criteria set forth in Section 1 of this regulation, provided that the agreement may, at the discretion of the Authority, remain in force for one or more programs, as circumstances warrant, notwithstanding Section 1(2) of this regulation.

Section 3. Guaranteed Student Loan and PLUS Program Participation. In order to participate in the Authority's GSLP or PLUS programs, the educational institution must:

(1) Be a "public or private, nonprofit institution of higher education" or a "vocational school" as defined in the Higher Education Act of 1965, as amended;

(2) Be certified by the Secretary to participate and have in force, if required by the Secretary, a participation agreement with the Secretary; and

(3) Execute an Administrative Agreement with the Authority, provided that the Authority may permit an educational institution, otherwise approved, to participate without an agreement until the annual, original principal amount of loans insured by the authority for students to attend the institution is \$50,000.

Section 4. State Student Incentive Grant Program Participation. In order to participate in the Authority's SSIG program, an educational institution must:

(1) Be a "public or private, nonprofit institution of higher education," a "proprietary institution of higher education," or a "postsecondary vocational institution" defined in the Higher Education Act of 1965, as amended;

(2) Be a "business school," "college," "school of nursing," or "vocational school" as defined in KRS 164.740;

(3) Be located within the Commonwealth of Kentucky;

(4) Offer an "eligible course of study," as defined in 11 KAR 5:020, which is not comprised solely of sectarian instruction; and

(5) Execute an Administrative Agreement with the Authority.

Section 5. Kentucky Tuition Grant Program Participation. In order to participate in the Authority's KTG program, an educational institution must:

(1) Be a private, nonprofit "college" as defined in KRS 164.740;

(2) Be located within the Commonwealth of Kentucky;

(3) Offer an "eligible course of study," as defined in 11 KAR 5:020, which is not comprised solely of sectarian instruction; and

(4) Execute an Administrative Agreement with the Authority.

Section 6. Commonwealth Work Study Program Participation. In order to participate in the Authority's CWS program, an educational institution must:

(1) Be a "business school," "college," "school of nursing," or "vocational school" as defined in KRS 164.740;

(2) Be located within the Commonwealth of Kentucky;

(3) Offer a program of study not comprised solely of sectarian instruction; and

(4) Execute an Administrative Agreement with the Authority.

Section 7. The Authority will execute an Administrative Agreement with an educational institution which may include non-main campuses of the institution that are not separately incorporated.

Section 8. The Authority may, as a precondition to maintenance of participation, require an educational institution to post a good and sufficient surety bond or other collateral in an amount necessary to ensure that the educational institution can meet its financial obligations to its students and/or to the authority. Said surety bond or other collateral shall be conditioned to provide

indemnification to the Authority and/or to any grantee or payee of benefits under an Authority administered program, related to a student's enrollment or acceptance for enrollment at the educational institution, for loss or damage suffered by reason of the insolvency of the institution, cessation of operation of the institution, misappropriation of student financial assistance funds by the institution, fraud or misrepresentation by the institution in obtaining student financial assistance benefits for students, or failure by the institution to make timely and proper disposition of funds. The Authority may require such surety bond or other collateral when a reasonable probability exists that the conditions of indemnification may occur.

PAUL P. BORDEN, Executive Director

APPROVED BY Agency: July 31, 1984

FILED WITH LRC: August 15, 1984 at 10 a.m.

A PUBLIC HEARING SCHEDULED: A public hearing regarding this regulation is scheduled to be held in Room 105 of the New Capitol Annex on Monday, September 24, 1984 at 10 a.m. Any interested persons wishing to comment or attend the hearing pursuant to KRS Chapter 13A must submit their written comments or statement of intent to attend to: The Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, KY 40601

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard F. Casey

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No

If no, please explain why tiering was not applied: The concept of tiering is not applicable to this regulation which merely delineates eligibility criteria.

HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 6:010. Commonwealth Work Study Program.

RELATES TO: KRS 164.744(2), 164.748(4), 164.753(6)

PURSUANT TO: KRS 13A.100, 13A.110, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority ("Authority") is empowered to administer student financial assistance programs in the form of work-study. The purpose of this regulation is to name the authority's program, and set forth the procedures under which it will be administered.

Section 1. There is hereby established a program of student financial assistance known as the Commonwealth Work Study Program, which may be cited as the KHEAA-CWSP or merely as CWSP.

Section 2. The Commonwealth Work Study Program is operated under provisions of Kentucky Revised Statutes 164.740 to 164.765 and Title 11 of the Kentucky Administrative Regulations.

Section 3. Participants in the Commonwealth Work Study Program shall comply with procedures and requirements established by the Authority delineated in the "Commonwealth Work Study Program Manual of Procedures and Guidelines, 1984 Edition" incorporated herein by reference. A current copy of this manual shall be maintained on file with the Legislative Research Commission. Copies of the manual may be obtained upon request to the Authority. Participating educational institutions shall maintain a current copy on file and, upon request, make a copy of the manual available for review by students and employers.

PAUL P. BORDEN, Executive Director

APPROVED BY Agency: July 31, 1984

FILED WITH LRC: August 15, 1984 at 10 a.m.

A PUBLIC HEARING SCHEDULED: A public hearing regarding this regulation is scheduled to be held in Room 105 of the New Capitol Annex on Monday, September 24, 1984 at 10 a.m. Any interested persons wishing to comment or attend the hearing pursuant to KRS Chapter 13A must submit their written comments or statement of intent to attend no later than September 19, 1984 to: The Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, KY 40601

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard F. Casey

(1) Type and number of entities affected: All eligible postsecondary school institutions in the Commonwealth.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:
 - (b) Reporting and paperwork requirements: None
- (3) Assessment of anticipated effect on state and local revenues: None
- (4) Assessment of alternative methods; reasons why alternatives were rejected: None
- (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (6) Any additional information or comments: None

Tiering:

Was tiering applied? No

If no, please explain why tiering was not applied: The concept of tiering is not applicable to this regulation; all institutions must satisfy identical eligibility requirements.

AGRICULTURAL EXPERIMENT STATION
Division of Regulatory Services

12 KAR 4:080. Plant nutrients.

RELATES TO: KRS 250.366(7)

PURSUANT TO: KRS 250.421

NECESSITY AND FUNCTION: To prescribe in detail when and how plant nutrients in addition to nitrogen, phosphorus and potassium shall be registered and guaranteed.

Section 1. Plant nutrients in addition to nitrogen, phosphorus and potassium when mentioned in any form or manner shall be registered and shall be guaranteed. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed and proof of availability shall be provided the director upon request. The minimum percentages which will be accepted for registration are as follows:

Element	%
Calcium (Ca)	1.0000
Magnesium (Mg)	0.5000
Sulfur (S)	1.0000
Boron (B)	0.0200
Chlorine (Cl)	0.1000
Cobalt (Co)	0.0005
Copper (Cu)	0.0500
Iron (Fe)	0.1000
Manganese (Mn)	0.0500
Molybdenum (Mo)	0.0005
Sodium (Na)	0.1000
Zinc (Zn)	0.0500

Section 2. Guarantees or claims for the plant nutrients listed in Section 1 of this regulation are the only ones which will be accepted. Proposed labels and directions for the use of the fertilizer shall be furnished with the application for registration upon request. Any of the elements listed in Section 1 of this regulation which are guaranteed shall appear in the order listed and shall immediately follow guarantees for the primary nutrients of nitrogen, phosphorus and potassium if present.

Section 3. 12 KAR 4:010, 4:020, 4:030, 4:040, 4:050, 4:060, and 4:070 are hereby repealed.

CHARLES E. BARNHART, Director

APPROVED BY AGENCY: August 3, 1984

FILED WITH LRC: August 7, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 28, 1984 at 9 a.m. in Room 101 Scovell Hall, University of Kentucky, Lexington, KY. Those interested in attending this hearing shall notify in writing the following office by September 23, 1984: Director, Kentucky Agricultural Experiment Station, Agricultural Science Center, North, University of Kentucky, Lexington, KY 40546.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: D. L. Terry

(1) Type and number of entities affected: Fertilizer manufacturers: 279 in-state, 203 out-of-state

(a) Direct and indirect costs or savings to those affected:

1. First year: No change from previous regulations.
2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): Puts competition on a fair basis.

(b) Reporting and paperwork requirements: Requires guarantees for all secondary and minor elements to be on fertilizer label.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change from previous regulations
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: All claimed nutrients must be guaranteed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. If no, please explain why tiering was not applied: With a low probability of a specific lot of fertilizer being officially sampled and analyzed within our regulatory program framework, and with an increasing trend in frequency of deficiency violations we have designed a law and administrative regulations that are consistent with most states including those adjacent to Kentucky. The investigational allowance (permissible deficiency below guaranteed analysis) have been adjusted to reflect current fertilizer technology and materials in industry so fewer samples will be classified as deficient. On the other hand, new penalty schedules in the proposed regulations will assign penalties to those lots of fertilizer which are sampled and found to be seriously deficient. Fewer than 1.5% of the samples are expected to be in this category.

AGRICULTURAL EXPERIMENT STATION
Division of Regulatory Services

12 KAR 4:090. Guaranteed analysis.

RELATES TO: KRS 250.366(7), (17)

PURSUANT TO: KRS 250.421

NECESSITY AND FUNCTION: To prescribe the format of the guaranteed analysis required to be on a fertilizer label.

Section 1. The following information in the format presented is the minimum required for all fertilizer labels. For packaged products, this information shall either:

- (1) Appear on the front or back of a package;
- (2) Occupy at least the upper-third of a side of a package; or
- (3) Be printed on a tag and attached to the package.

Section 2. This information shall be in a readable and conspicuous form. For bulk products, this same information in written or printed form shall accompany delivery and be supplied to the purchaser at time of delivery.

- (1) Net weight.
- (2) Brand and grade: provided that the grade shall not be required when no primary nutrients are claimed.
- (3) Guaranteed analysis:
 - Total Nitrogen (N)** %
 - ___ % Ammoniacial Nitrogen
 - ___ % Nitrate Nitrogen
 - ___ % Water Insoluble Nitrogen
 - ___ % Urea Nitrogen
 - ___ % (Other recognized and determinable forms of N)
 - Available Phosphoric Acid (P₂O₅) %
 - Soluble Potash (K₂O) %
 - (Other nutrients, elemental basis)*** %

*If percentage is zero (0), the nutrient shall be omitted from the statement.

**If the chemical forms of N are claimed, the form shall be guaranteed in the format shown and the percentages of the individual forms shall add up to the total nitrogen percentage.

***As prescribed by 12 KAR 4:080.

CHARLES E. BARNHART, Director

APPROVED BY AGENCY: August 4, 1984

FILED WITH LRC: August 7, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 28, 1984 at 9 a.m. in Room 101 Scovell Hall, University of Kentucky, Lexington, KY. Those interested in attending this hearing shall notify in writing the following office by September 23, 1984: Director, Kentucky Agricultural Experiment Station, Agricultural Science Center, North, University of Kentucky, Lexington, KY 40546.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: D. L. Terry

(1) Type and number of entities affected: Fertilizer manufacturers: 279 in-state, 203 out-of-state

(a) Direct and indirect costs or savings to those affected:

1. First year: No change from previous regulations.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): The standard

guaranteed analysis format reduces misunderstandings and promotes fair competition.

(b) Reporting and paperwork requirements: Requires specific guaranteed analysis format on each fertilizer label.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change from previous regulations
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Any other way would be non-standard and cause problems in the industry.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No

If no, please explain why tiering was not applied: With a low probability of a specific lot of fertilizer being officially sampled and analyzed within our regulatory program framework, and with an increasing trend in frequency of deficiency violations we have designed a law and administrative regulations that are consistent with most states including those adjacent to Kentucky.

The investigational allowance (permissible deficiency below guaranteed analysis) have been adjusted to reflect current fertilizer technology and materials in industry so fewer samples will be classified as deficient. On the other hand, new penalty schedules in the proposed regulations will assign penalties to those lots of fertilizer which are sampled and found to be seriously deficient. Fewer than 1.5% of the samples are expected to be in this category.

AGRICULTURAL EXPERIMENT STATION
Division of Regulatory Services

12 KAR 4:100. Slowly released nutrients.

RELATES TO: KRS 250.366(7), (17), (18)

PURSUANT TO: KRS 250.421

NECESSITY AND FUNCTION: To interpret the fertilizer law as it relates to the proper labeling of slowly released nutrients.

Section 1. No fertilizer labeling shall bear a statement that connotes or implies that certain plant nutrients contained in a fertilizer are released slowly over a period of time, unless the nutrient or nutrients are identified and guaranteed.

Section 2. Types of products with slow release properties recognized are:

(1) Water insoluble (N products only), such as natural organics, urea-formaldehyde, IBDU, oxamide, etc.;

(2) Coated slow release, such as sulfur coated urea and other encapsulated soluble fertilizers; and

(3) Occluded slow release, where fertilizers or fertilizer

materials are mixed with waxes, resins, or other inert materials and formed into particles.

The terms, "water insoluble, coated slow release, and occluded slow release" are accepted as descriptive of these products, respectively, provided the manufacturer can show a testing program substantiating the claim (testing under guidance of Kentucky Agricultural Experiment Station personnel or a recognized reputable researcher acceptable to the director). A laboratory procedure, acceptable to the director for evaluating the release characteristics of the product(s) must also be provided by the manufacturer.

Section 3. To supplement Section 2 of this regulation when the nitrogen is organic, it should be established that if the labeling states the amount of organic nitrogen present in a phrase, such as "nitrogen in organic form equivalent to X% N," then the water insoluble guarantee must not be less than sixty (60) percent of the nitrogen so designated. For example: If the total nitrogen guarantee for a fertilizer is ten (10) percent and the label states, "Nitrogen in organic form equivalent to two and five-tenths (2.5) percent N" then the water insoluble guarantee must not be less than one and five-tenths (1.5) percent ($2.5\% \times 0.6 = 1.5\%$).

Section 4. When a slowly released nutrient is less than fifteen (15) percent of the guarantee for either total nitrogen (N), available phosphoric acid (P_2O_5), or soluble potash (K_2O), as appropriate, the labeling shall make no slowly available claims.

CHARLES E. BARNHART, Director

APPROVED BY AGENCY: August 4, 1984

FILED WITH LRC: August 7, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 28, 1984 at 9 a.m. in Room 101 Scovell Hall, University of Kentucky, Lexington, KY. Those interested in attending this hearing shall notify in writing the following office by September 23, 1984: Director, Kentucky Agricultural Experiment Station, Agricultural Science Center, North, University of Kentucky, Lexington, KY 40546.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: D. L. Terry

(1) Type and number of entities affected: Fertilizer manufacturers: 279 in-state, 203 out-of-state

(a) Direct and indirect costs or savings to those affected:

1. First year: No change from previous regulations.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): Requires a standard way of guaranteeing slowly released nutrients which make competition fairer.

(b) Reporting and paperwork requirements: If slowly released nutrients are claimed they must be guaranteed in a standard way.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change from previous regulations

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Any other way would be non-standard and cause problems in the industry.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. With a low probability of a specific lot of fertilizer being officially sampled and analyzed within our regulatory program framework, and with an increasing trend in frequency of deficiency violations we have designed a law and administrative regulations that are consistent with most states including those adjacent to Kentucky. The investigational allowance (permissible deficiency below guaranteed analysis) have been adjusted to reflect current fertilizer technology and materials in industry so fewer samples will be classified as deficient. On the other hand, new penalty schedules in the proposed regulations will assign penalties to those lots of fertilizer which are sampled and found to be seriously deficient. Fewer than 1.5% of the samples are expected to be in this category.

AGRICULTURAL EXPERIMENT STATION Division of Regulatory Services

12 KAR 4:110. Terms and definitions.

RELATES TO: KRS 250.406

PURSUANT TO: KRS 250.421

NECESSITY AND FUNCTION: To utilize standard terms and definitions which reduces regulatory problems for companies selling fertilizer in Kentucky and other states.

Section 1. Except as the director has designated otherwise in specific cases, the official terms and definitions for commercial fertilizers adopted by the Association of American Plant Food Control Officials are hereby adopted by reference.

Section 2. The official terms and definitions adopted by the Association of American Plant Food Control Officials are generally recognized by industry and other regulatory agencies in North America as the standards. The terms are those commonly used in the fertilizer trade, such as brand, fertilizer grade, and primary nutrients; and the definitions include those for nitrogen, phosphorus, potassium, magnesium, sulfur, and manganese products.

Section 3. The official terms and definitions adopted are those found in Official Publication No. 37 (1984) of the Association of American Plant Food Control Officials. Copies are available from: Treasurer, Association of American Plant Food Control Officials, P.O. Box 1163, 1100 Bank Street, Room 412, Richmond, Virginia 23209.

CHARLES E. BARNHART, Director

APPROVED BY AGENCY: August 4, 1984

FILED WITH LRC: August 7, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 28, 1984 at 9 a.m. in Room 101 Scovell Hall, University of Kentucky, Lexington, KY. Those interested in attending this hearing shall notify in writing the following office by September 23, 1984: Director, Kentucky Agricultural Experiment Station, Agricultural Science Center, North, University of Kentucky, Lexington, KY 40546.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: D. L. Terry

(1) Type and number of entities affected: Fertilizer manufacturers: 279 in-state, 203 out-of-state

(a) Direct and indirect costs or savings to those affected:

1. First year: No change from previous regulations.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): Use of standard definitions reduces misunderstandings and improves fair competition.

(b) Reporting and paperwork requirements: Requires None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change from previous regulations

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of writing our own definitions would be too time consuming.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. With a low probability of a specific lot of fertilizer being officially sampled and analyzed within our regulatory program framework, and with an increasing trend in frequency of deficiency violations we have designed a law and administrative regulations that are consistent with most states including those adjacent to Kentucky. The investigational allowance (permissible deficiency below guaranteed analysis) have been adjusted to reflect current fertilizer technology and materials in industry so fewer samples will be classified as deficient. On the other hand, new penalty schedules in the proposed regulations will assign penalties to those lots of fertilizer which are sampled and found to be seriously deficient. Fewer than 1.5% of the samples are expected to be in this category.

AGRICULTURAL EXPERIMENT STATION

Division of Regulatory Services

12 KAR 4:120. Definition of "percentage."

RELATES TO: KRS 250.366(17)

PURSUANT TO: KRS 250.421

NECESSITY AND FUNCTION: To prescribe an unambiguous way of using the term "percentage" on a fertilizer label.

Section 1. The term of "percentage" by symbol or word, when used on fertilizer labeling shall represent only the amount of individual plant nutrients in relation to the total product by weight.

CHARLES E. BARNHART, Director

APPROVED BY AGENCY: August 4, 1984

FILED WITH LRC: August 7, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 28, 1984 at 9 a.m. in Room 101 Scovell Hall, University of Kentucky, Lexington, KY. Those interested in attending this hearing shall notify in writing the following office by September 23, 1984: Director, Kentucky Agricultural Experiment Station, Agricultural Science Center, North, University of Kentucky, Lexington, KY 40546.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: D. L. Terry

(1) Type and number of entities affected: Fertilizer manufacturers: 279 in-state, 203 out-of-state

(a) Direct and indirect costs or savings to those affected:

1. First year: No change from previous regulations.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change from previous regulations.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Other definitions of "percentage" increase the probability of its being misunderstood.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. With a low probability of a specific lot of fertilizer being officially sampled and analyzed within our regulatory program framework, and with an increasing trend in frequency of deficiency violations we have designed a law and administrative regulations that are consistent with most states including those adjacent to Kentucky. The investigational allowance (permissible deficiency below guaranteed analysis) has been adjusted to reflect current fertilizer technology and materials in industry so fewer samples will be classified as deficient. On the other hand, new penalty schedules in the proposed regulations will assign penalties to those lots of fertilizer which are sampled and found to be seriously deficient. Fewer than 1.5% of the samples are expected to be in this category.

AGRICULTURAL EXPERIMENT STATION

Division of Regulatory Services

12 KAR 4:130. Investigational allowances.

RELATES TO: KRS 250.366(19), 250.391(3), 250.396(1)(2), 250.401

PURSUANT TO: KRS 250.421

NECESSITY AND FUNCTION: To prescribe scientifically sound and fair investigational allowances as a basis for declaring a fertilizer sample deficient in its

guaranteed analyses and to detail the calculation of the index value of a fertilizer.

Section 1. A fertilizer shall be deemed deficient if the analysis of an official sample for any primary nutrient is below the guarantee by an amount exceeding the values in the following schedule.

Guaranteed percent	Total Nitrogen (N) percent*	Available Phosphoric Acid (P ₂ O ₅) percent*	Soluble Potash (K ₂ O) percent*
05 or less	0.37	0.65	0.39
06	0.47	0.71	0.47
07	0.59	0.77	0.56
08	0.72	0.82	0.63
09	0.81	0.86	0.70
10	0.89	0.89	0.76
12	1.03	0.95	0.87
14	1.18	1.02	0.96
16	1.29	1.12	1.05
18	1.43	1.19	1.12
20	1.57	1.32	1.18
22	1.62	1.39	1.22
24	1.65	1.46	1.26
26	1.66	1.53	1.29
28	1.58	1.59	1.33
30	1.28	1.67	1.36
32 or more	1.28	1.67	1.36

For guarantees not listed, calculate the appropriate value by interpolation.

*For these investigational allowances to be applicable, the recommended Association of Official Analytical Chemists' procedures for obtaining samples, preparation and analysis must be used. These are described in Official Methods of Analysis of the Association of Official Analytical Chemists, 13th Edition, 1980, and in succeeding issues of the Journal of the Association of Official Analytical Chemists. In evaluating replicate data, Table 19, page 935, Journal of the Association of Official Analytical Chemists, Volume 49, No. 5, October, 1966, should be followed.

Section 2. A fertilizer shall be deemed deficient in the overall index value if the overall index value is less than ninety-seven (97) percent.

(1) The overall index value is calculated by comparing the value guaranteed with the value found. Unit values of the nutrients used shall be those referred to in KRS 250.401.

(2) Overall index value—Example of calculation for a 10-10-10 grade found to contain ten and one-tenth (10.1) percent Total Nitrogen (N), ten and two-tenths (10.2) percent Available Phosphoric Acid (P₂O₅) and ten and one-tenth (10.1) percent Soluble Potash (K₂O). Nutrient unit values are assumed to be three (3) dollars per unit N, two (2) dollars per unit (P₂O₅), and one (1) dollar per unit K₂O.

10.0 units N	x3 =	30.0
10.0 units P ₂ O ₅	x2 =	20.0
10.0 units K ₂ O	x1 =	10.0
Commercial Value Guaranteed = 60.0		

10.0 units of N	x3 =	30.3
10.2 units of P ₂ O ₅	x2 =	20.4
10.1 units K ₂ O	x1 =	10.1
Commercial Value Found = 60.8		

$$\text{Overall Index Value} = 100(60.8/60.00) = 101.3\%$$

Section 3. Secondary and minor elements shall be deemed deficient if the analysis of an official sample for

any of these elements is below the guarantee by an amount exceeding the values in the following schedule:

Element	Investigational Allowance
Calcium	) 0.2 unit + 5% of guarantee
Magnesium	) 0.2 unit + 5% of guarantee
Sulfur	) 0.2 unit + 5% of guarantee
Boron	) 0.003 unit + 15% of guarantee
Molybdenum	) 0.0001 unit + 30% of guarantee
Chlorine	) 0.005 unit + 10% of guarantee
Copper	) 0.005 unit + 10% of guarantee
Iron	) 0.005 unit + 10% of guarantee
Manganese	) 0.005 unit + 10% of guarantee
Sodium	) 0.005 unit + 10% of guarantee
Zinc	) 0.005 unit + 10% of guarantee

The maximum allowance when calculated in accordance to the above shall be one (1) unit (1%).

CHARLES E. BARNHART, Director

APPROVED BY AGENCY: August 4, 1984

FILED WITH LRC: August 7, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 28, 1984 at 9 a.m. in Room 101 Scovell Hall, University of Kentucky, Lexington, KY. Those interested in attending this hearing shall notify in writing the following office by September 23, 1984: Director, Kentucky Agricultural Experiment Station, Agricultural Science Center, North, University of Kentucky, Lexington, KY 40546.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: D. L. Terry

(1) Type and number of entities affected: Fertilizer manufacturers: 279 in-state, 203 out-of-state

(a) Direct and indirect costs or savings to those affected:

1. First year: The new investigational allowances are expected to result in about 20% fewer deficient samples and should reduce the direct costs of handling the paperwork by an equal amount.

2. Continuing costs or savings: No change

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Paperwork should be reduced by about 20%.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The fewer deficient samples will reduce our costs by about 20%.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Paperwork should be reduced by about 20%.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The investigational allowances are the best of other alternatives because they take into account Kentucky sampling studies.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. With a low probability of a specific lot of fertilizer being officially sampled and analyzed within our regulatory program framework, and with an increasing trend in frequency of deficiency violations we have designed a law and administrative regulations that are consistent with most states including those adjacent to Kentucky. The investigational allowance (permissible deficiency below guaranteed analysis) have been adjusted to reflect current fertilizer technology and materials in industry so fewer samples will be classified as deficient. On the other hand, new penalty schedules in the proposed regulations will assign penalties to those lots of fertilizer which are sampled and found to be seriously deficient. Fewer than 1.5% of the samples are expected to be in this category.

AGRICULTURAL EXPERIMENT STATION

Division of Regulatory Services

12 KAR 4:140. Monetary penalties.

RELATES TO: KRS 250.396(1), (2)

PURSUANT TO: KRS 250.421

NECESSITY AND FUNCTION: To prescribe the specific method of calculating the monetary penalties required by the fertilizer law.

Section 1. Penalties for deficiencies in Total Nitrogen (N), Available Phosphoric Acid (P_2O_5), soluble potash (K_2O), and index value shall be calculated from the following schedule:

Number of Investigational Allowances Below Guarantee	Penalty Schedule
≤ 2	Equal to the monetary value of the deficiency

Number of Investigational Guarantees Below Guarantee	Penalty Schedule
$>2 \leq 3$	Two (2) times the monetary value of the deficiency
> 3	Three (3) times the monetary value of the deficiency

Section 2. Overages of individual primary nutrients are allowed to reduce the penalty calculated in Section 1 of this regulation a maximum of seventy-five (75) percent when the following conditions apply:

- (1) The Index Value is equal to or exceeds ninety-seven (97) percent; and,
- (2) Only one (1) primary nutrient is deficient beyond one (1) investigational allowance.

The value of an overage is determined by multiplying the unit value by the number of units the found analysis exceeds the guarantee. If two (2) nutrients exceed their guarantee then the total value of the overage is the sum of the two (2). The maximum adjustment for overage that is

allowed is found by multiplying 0.75 by the penalty calculated in Section 1 of this regulation.

Section 3. When a fertilizer is subject to a penalty from both a primary nutrient deficiency and an index value deficiency, only the larger penalty shall apply; however, in no case shall the penalty exceed the total value of the fertilizer.

Section 4. Penalties for deficiencies in secondary and minor elements and for excess chlorine in tobacco fertilizer shall be calculated from the following schedule.

(1) Deficiencies.

Number of Investigational Allowances Below Guarantee	Penalty Schedule
≤ 2	Two (2) times the monetary value of the deficiency
> 2	Three (3) times the monetary value of the deficiency

(2) Excess Chlorine in tobacco fertilizers.

The investigational allowance for maximum chlorine shall be 0.5%

Number of Investigational Allowances Above Maximum Chlorine Guarantee	Penalty Schedule
≤ 2	Two (2) times the soluble potash (for tobacco) unit value
> 2	Three (3) times the soluble potash (for tobacco) unit value

Section 5. Any penalty assessed under Section 1 of this regulation shall be added to any penalty assessed under Section 4 of this regulation and the total shall be paid by the registrant to the consumer of the lot of fertilizer represented by the sample within three (3) months after the date of notice from the director. If said consumer cannot be found, the amount of the penalty payments shall be paid to a non-religious charitable or educational institution within three (3) months after the date of the notice from the director to the registrant. If the lot of fertilizer is on hand at a retail location the penalty payments assessed under this section shall be used to reduce the retail price of the fertilizer if it is to be relabeled and sold.

Section 6. In no case shall the total of the penalties assessed under this regulation exceed the retail value of the fertilizer.

CHARLES E. BARNHART

APPROVED BY AGENCY: August 4, 1984

FILED WITH LRC: August 7, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 28, 1984 at 9 a.m. in Room 101 Scovell Hall, University of Kentucky,

Lexington, KY. Those interested in attending this hearing shall notify in writing the following office by September 23, 1984: Director, Kentucky Agricultural Experiment Station, Agricultural Science Center, North, University of Kentucky, Lexington, KY 40546.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: D. L. Terry

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: Under the old law and regulations manufacturers refunded an average of \$1.00 for each ton sampled. Under the proposed regulation the projected average refund plus penalties for each ton will be about \$2.40.

2. Continuing costs or savings: The anticipated effect is to lower the number of deficient samples thereby lowering the cost to the manufacturers.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): The manufacturers making high quality fertilizer will experience fewer deficiencies and a lower penalty; therefore, their costs should be lower than those companies manufacturing lower quality of fertilizer.

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The expected 20% decrease in deficient samples will about offset the expected increase in samples with penalties.

2. Continuing costs or savings: No change

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The propose penalty schedule penalizes those manufacturers that have excessive deficiencies better than the alternatives.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. With a low probability of a specific lot of fertilizer being officially sampled and analyzed within our regulatory program framework, and with an increasing trend in frequency of deficiency violations we have designed a law and administrative regulations that are consistent with most states including those adjacent to Kentucky. The investigational allowance (permissible deficiency below guaranteed analysis) have been adjusted to reflect current fertilizer technology and materials in industry so fewer samples will be classified as deficient. On the other hand, new penalty schedules in the proposed regulations will assign penalties to those lots of fertilizer which are sampled and found to be seriously deficient. Fewer than 1.5% of the samples are expected to be in this category.

AGRICULTURAL EXPERIMENT STATION

Division of Regulatory Services

12 KAR 4:150. Scientific sampling procedures.

RELATES TO: KRS 250.391(2)

PURSUANT TO: KRS 250.421

NECESSITY AND FUNCTION: To prescribe the sources of scientific sampling procedures as prescribed by the fertilizer law.

Section 1. Sampling equipment and procedures shall be those adopted by the Association of Official Analytical Chemists wherever applicable.

CHARLES E. BARNHART, Director

APPROVED BY AGENCY: August 4, 1984

FILED WITH LRC: August 7, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 28, 1984 at 9 a.m. in Room 101 Scovell Hall, University of Kentucky, Lexington, KY. Those interested in attending this hearing shall notify in writing the following office by September 23, 1984: Director, Kentucky Agricultural Experiment Station, Agricultural Science Center, North, University of Kentucky, Lexington, KY 40546

REGULATORY IMPACT ANALYSIS

Agency Contact Person: D. L. Terry

(1) Type and number of entities affected: Fertilizer manufacturers: 279 in-state, 203 out-of-state

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change from previous regulations.

2. Continuing costs or savings: No change

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: It would be too time consuming and costly to develop our own sampling methods.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No

If no, please explain why tiering was not applied: With a low probability of a specific lot of fertilizer being officially sampled and analyzed within our regulatory program framework, and with an increasing trend in frequency of deficiency violations we have designed a law and administrative regulations that are consistent with most states including those adjacent to Kentucky. The investigational allowance (permissible deficiency below guaranteed analysis) has been adjusted to reflect current fertilizer

technology and materials in industry so fewer samples will be classified as deficient. On the other hand, new penalty schedules in the proposed regulations will assign penalties to those lots of fertilizer which are sampled and found to be seriously deficient. Fewer than 1.5% of the samples are expected to be in this category.

AGRICULTURAL EXPERIMENT STATION Division of Regulatory Services

12 KAR 4:160. Guaranteed nutrients.

RELATES TO: KRS 250.366(7)

PURSUANT TO: KRS 250.421

NECESSITY AND FUNCTION: To interpret the fertilizer law as it relates to the format for guaranteeing chemical forms of a guaranteed nutrient.

Section 1. When the chemical forms of a plant nutrient are guaranteed, the percentage for each component shall be shown before the name of the form. Example:

Total nitrogen (N) 34%

17% nitrate nitrogen

17% ammoniacal nitrogen

CHARLES E. BARNHART, Director

APPROVED BY AGENCY: August 4, 1984

FILED WITH LRC: August 7, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 28, 1984 at 9 a.m. in Room 101 Scovell Hall, University of Kentucky, Lexington, KY. Those interested in attending this hearing shall notify in writing the following office by September 23, 1984: Director, Kentucky Agricultural Experiment Station, Agricultural Science Center, North, University of Kentucky, Lexington, KY 40506

REGULATORY IMPACT ANALYSIS

Agency Contact Person: D. L. Terry

(1) Type and number of entities affected: Fertilizer manufacturers: 279 in-state, 203 out-of-state

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Any other way would be non-standard and cause problems in the industry.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. With a low probability of a specific lot of fertilizer being officially sampled and analyzed within our regulatory program framework, and with an increasing trend in frequency of deficiency violations we have designed a law and administrative regulations that are consistent with most states including those adjacent to Kentucky. The investigational allowance (permissible deficiency below guaranteed analysis) has been adjusted to reflect current fertilizer technology and materials in industry so fewer samples will be classified as deficient. On the other hand, new penalty schedules in the proposed regulations will assign penalties to those lots of fertilizer which are sampled and found to be seriously deficient. Fewer than 1.5% of the samples are expected to be in this category.

AGRICULTURAL EXPERIMENT STATION Division of Regulatory Services

12 KAR 4:170. Maximum chlorine guarantee for tobacco fertilizers.

RELATES TO: KRS 250.366(7) and 250.411(1)

PURSUANT TO: KRS 250.421

NECESSITY AND FUNCTION: To prescribe the specific format and conditions for maximum chlorine guarantees for tobacco fertilizers which is necessary for production of quality tobacco.

Section 1. All fertilizers (bag, bulk, liquid, custom mixes, etc.) sold for or represented for use on field crop tobacco, not plant beds, must, in addition to the other guarantees specified by regulation, state a maximum chlorine guarantee in the following format:

Chlorine (Cl), Maximum 2.5 %

The maximum chlorine guarantee shall be placed below the Guaranteed Analysis required by regulation and shall be prominently and conspicuously displayed on the invoice or shipping ticket that accompanies bulk sales.

CHARLES E. BARNHART, Director

APPROVED BY AGENCY: August 4, 1984

FIELD WITH LRC: August 7, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 28, 1984 at 9:00 a.m. in Room 101 Scovell Hall, University of Kentucky, Lexington, KY. Those interested in attending this hearing shall notify in writing the following office by September 23, 1984: Director, Kentucky Agricultural Experiment Station, Agricultural Science Center, North, University of Kentucky, Lexington, KY 40546

REGULATORY IMPACT ANALYSIS

Agency Contact Person: D. L. Terry

(1) Type and number of entities affected: Fertilizer manufacturers: 279 in-state, 203 out-of-state

(a) Direct and indirect costs or savings to those affected:

1. First year: Manufacturers of tobacco fertilizer will save about \$3 per ton

2. Continuing costs or savings: Same as first year

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Requires that the maximum chlorine guarantee be on invoices for bulk products.

- (2) Effects on the promulgating administrative body:
- (a) Direct and indirect costs or savings:
 - 1. First year: None
 - 2. Continuing costs or savings: None
 - 3. Additional factors increasing or decreasing costs: None
 - (b) Reporting and paperwork requirements: None
 - (3) Assessment of anticipated effect on state and local revenues: None
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed regulation best carries out the recommendations of the Department of Agronomy at U.K.
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments: None

Tiering:

Was tiering applied? No. If no, please explain why tiering was not applied: With a low probability of a specific lot of fertilizer being officially sampled and analyzed within our regulatory program framework, and with an increasing trend in frequency of deficiency violations we have designed a law and administrative regulations that are consistent with most states including those adjacent to Kentucky. The investigational allowance (permissible deficiency below guaranteed analysis) have been adjusted to reflect current fertilizer technology and materials in industry so fewer samples will be classified as deficient. On the other hand, new penalty schedules in the proposed regulations will assign penalties to those lots of fertilizer which are sampled and found to be seriously deficient. Fewer than 1.5% of the samples are expected to be in this category.

TRANSPORTATION CABINET

600 KAR 1:030. Public comment hearings.

RELATES TO: KRS 13A.100

PURSUANT TO: KRS 13A.100, 174.080

NECESSITY AND FUNCTION: KRS 13A.100 requires that the procedures to be utilized by an administrative body in the conduct of hearings by or for the administrative body be promulgated as an administrative regulation. This administrative regulation outlines the procedures to be used by the Transportation Cabinet in the conduct of those public hearings which the cabinet is required to hold or which the cabinet determines are necessary to hold for the purpose of soliciting public comment on any matter of interest involving the cabinet, excluding those hearings held pursuant to KRS Chapter 281.

Section 1. When state or federal law requires that a public hearing be held or offered or when the Secretary of the Transportation Cabinet determines that a public hearing is needed for the purpose of soliciting public comment on any matter of interest involving the cabinet, except those hearings held pursuant to KRS Chapter 281, the notice of the hearing or opportunity for a hearing will be published in accordance with KRS Chapter 424 or KRS Chapter 13A.

- (2) If no one requests in writing that a public hearing

be held when the opportunity is offered, then the hearing need not be held, provided that all necessary formalities will be observed in any event where state or federal law may so require.

- (3) The notice of the public hearing shall specify the date, time and location of the hearing and shall contain a description of the proposed project or the necessity for the public hearing.

Section 2. (1) A Transportation Cabinet representative shall preside over the public hearing.

- (2) Any attendee wishing to speak may be required to register at the hearing in order to make an oral statement at that hearing. Any attendee can submit written statements regarding the issue of the public hearing. All interested persons shall be given the opportunity to be heard, either individually or through their representative(s).

- (3) Presiding officers may limit the length of each speaker's statements based on factors including, but not limited to: the length of the hearing; the number of attendees wishing to speak, including whether or not their views will be provided by a representative; and the complexity of the issues involved.

- (4) The presiding Transportation Cabinet representative shall open the hearing with a statement regarding the purpose and general procedure to be employed in the conduct of the hearing.

FLOYD G. POORE, Secretary

APPROVED BY AGENCY: August 7, 1984

FILED WITH LRC: August 15, 1984 at 12 noon

PUBLIC HEARING SCHEDULED: A public hearing on this administrative regulation will be held on September 25, 1984, at 3:30 p.m. in the 4th floor hearing room of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those interested in attending this hearing shall, no later than September 20, 1984, contact the following in writing: Larry E. Moore, Assistant to the Secretary, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry E. Moore

- (1) Type and number of entities affected: Any person or organization in attendance at a public comment hearing held by the Transportation Cabinet.

- (a) Direct and indirect costs or savings to those affected: None

- 1. First year: None
- 2. Continuing costs or savings: None
- 3. Additional factors increasing or decreasing costs (note any effects upon competition): None

- (b) Reporting and paperwork requirements: None
- (2) Effects on the promulgating administrative body: Establishes the cabinet's procedures for holding public comment hearings.

- (a) Direct and indirect costs or savings: None
 - 1. First year: None
 - 2. Continuing costs or savings: None
 - 3. Additional factors increasing or decreasing costs: None

- (b) Reporting and paperwork requirements: None
- (3) Assessment of anticipated effect on state and local revenues: None

- (4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. Not applicable to this situation.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Public Comment Hearings

SPONSOR: Transportation Cabinet

NOTE SUMMARY

LOCAL GOVERNMENT MANDATE:

TYPE OF MANDATE: N/A

LEVEL(S) OF IMPACT:

BUDGET UNIT(S) IMPACT:

FISCAL SUMMARY: N/A

MEASURE'S PURPOSE: To establish procedures for the Transportation Cabinet in holding public comment hearings.

PROVISION/MECHANICS: N/A

FISCAL EXPLANATION: N/A

TRANSPORTATION CABINET

Office of Personnel Management

600 KAR 1:040. Separations and disciplinary procedures.

RELATES TO: KRS Chapter 18A, 174.080

PURSUANT TO: KRS 13A.100, 174.080

NECESSITY AND FUNCTION: KRS 174.080 allows the Secretary of the Transportation Cabinet to promulgate administrative regulations. KRS 13A.100 requires any administrative body which is empowered to promulgate administrative regulations to prescribe the disciplinary procedures within the jurisdiction of the administrative body. This regulation is necessary to define and prescribe such disciplinary procedure within the Transportation Cabinet.

Section 1. Authority to Approve Separation and Disciplinary Action. The Secretary of the Transportation Cabinet has delegated the authority for the approval of employee separation and discipline as follows: (1) All employees. The approval of the Executive Director, Office of Personnel Management, must be obtained prior to the separation by layoff, dismissal, disciplinary fine or letter of reprimand being imposed against any employee of this cabinet.

(2) District office employees. After the required approval has been obtained, the Chief Highway District Engineers are authorized to prepare and sign the required letter of notification advising the employee of his suspension, dismissal, layoff or disciplinary fine. The letter will then be delivered to the employee. The Chief Highway District Engineer and the Executive Director, Office of Personnel Management, are authorized to suspend employees with status under the Merit System for a specified period of time, provided that no other disciplinary action is taken regarding the act committed by the employee providing the requirements of this regulation are complied with. The Chief Highway

District Engineer and the Executive Director, Office of Personnel Management, may suspend employees pending further determination as to the appropriate action to be taken against the employee provided the provisions of this regulation are complied with.

(3) Central office. In the case of a disciplinary measure against an employee in the Central Office, the division or office will prepare the required letter of notification advising the employee of his suspension, dismissal, layoff or disciplinary fine for the signature of the Executive Director of the Office of Personnel Management. After the signature has been obtained, the letter will be returned to the division or office for delivery to the employee.

Section 2. Responsibility of the Immediate Supervisor. The immediate supervisor will report employee delinquency, misconduct or incompetency in accordance with procedures established in this regulation, to the Chief Highway District Engineer, office head or division director as appropriate. The supervisor who fails to report employees who violate the policies and procedures of this cabinet or the provisions of the personnel laws and regulations because of friendship or other personal reasons, or because he does not agree with the disposition of certain similar cases, is evading his responsibility and may be disciplined.

Section 3. Separation and Disciplinary Procedures.

(1) Infractions. Employees involved in trivial infractions should usually be reprimanded by their immediate supervisor at the time the infraction occurs, and in private. If the offense continues or the employee commits an act warranting suspension, dismissal or a disciplinary fine, the immediate supervisor shall complete, in triplicate, an Employee Disciplinary Report. The original shall be forwarded to the Chief Highway District Engineer, office head or division director, with the immediate supervisor's recommendation as to the punitive action to be taken. The duplicate copy of the Employee Disciplinary Report will be given to the employee. The third copy will be sent to the Executive Director, Office of Personnel Management, to be filed in the employee's personnel folder. The report shall be specific as to the time, place and persons by name, involved in the violation and a specific description of the unlawful act. In emergency situations, the immediate supervisor will contact the Chief Highway District Engineer, office head or division director or their designated representative of instructions by the most expeditious means available. Emergency situations are defined as those situations where the employee's action, attitude or condition may endanger the public, public property or personnel, or property of the Commonwealth, and action must be taken immediately to remove the employee from the work site.

(2) Investigations. The Chief Highway District Engineer, office head or division director may, upon advice that an employee under his jurisdiction has violated the policies or procedures of this cabinet or provisions of the personnel laws and rules, designate an individual to investigate the alleged violation. Such investigator will prepare a written report with his opinion as to the innocence or guilt of the employee. Upon receipt of the report and provided the Chief Highway District Engineer, office head or division director believes the employee should be fined, suspended or dismissed, a copy of the report with their recommendations will be

submitted to the Executive Director, Office of Personnel Management, for approval.

Section 4. Layoffs. The Transportation Cabinet must prepare and submit a layoff plan to the Commissioner of Personnel for approval prior to separation by layoff. The Office of Personnel Management is responsible for coordinating the preparation of the layoff plan and will submit the plan to the Department of Personnel for approval. Steps to be taken after approval has been obtained are listed below:

(1) The Transportation Cabinet may lay off an employee in the classified service whenever it is deemed necessary by reason of shortage of funds or work, abolishment of a position, or other material change in duties or organization. The employee shall be notified of the effective date of the layoff and shall be given written notice of the reason for the layoff and of his right to appeal.

(2) Seniority, performance appraisals, conduct, qualifications and type of appointment shall be considered in determining the order of layoffs in a manner prescribed or approved by the Commissioner of Personnel. No status employee is to be separated by layoff while there are provisional, temporary, emergency, or probationary employees serving in the agency in the same class in the same locality.

(3) The Transportation Cabinet and Personnel Department shall attempt to place the employee in another position for which the employee is qualified.

Section 5. Dismissals. (1) The Transportation Cabinet may remove any employee with status only for cause after furnishing the employee and the Commissioner of Personnel with a written statement of the specific reasons for dismissal. Such reasons shall be specific as to the statutory and/or regulatory violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. Specificity shall be determined by the nature of the violation and the time period over which the violation occurred.

(2) Notifications of dismissal shall inform the employee that he has ten (10) working days, not including the date the notice is received, to reply thereto in writing or upon request to appear personally with counsel and reply to the Secretary of Transportation or his deputy. An employee who desires to respond to the charges in writing or requests to appear personally will be advised to submit his written response or request to appear to the Executive Director, Office of Personnel Management. Such reply or request by employee shall not operate to stay the statutory time period for appeal to the Kentucky Personnel Board. All written responses to the charges or requests to appear personally will be responded to by the Executive Director, Office of Personnel Management, on behalf of the Secretary, Transportation Cabinet.

(3) An employee with status may appeal his dismissal to the Kentucky Personnel Board.

(4) A dismissed employee may be required to forfeit all annual leave.

(5) Any employee who has been dismissed for cause or who has resigned while charges for dismissal for cause were pending and who seeks further employment with the state shall not be certified to the agency from which separated unless the agency requests such certification.

Section 6. Separation During Probation Period. An employee may be separated without the right of appeal at any time during the probationary period.

Section 7. Resignation. An employee who desires to terminate his service with the state shall submit a written resignation to the Chief Highway District Engineer, office head or division director. Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the resignation and be filed in his service record in the cabinet. Failure of an employee to give fourteen (14) calendar days notice with resignation may result in forfeiture of accrued annual leave. A Notice of Resignation may be signed by the employee. If the employee refuses to submit or sign a letter of resignation, the employee will be dismissed for unauthorized absenteeism in accordance with procedures established in this regulation.

Section 8. Retirement. If an employee with status is retired, he is considered as separated without prejudice and does not have the right of appeal.

Section 9. Suspensions. The Transportation Cabinet, through the appointing authority, may suspend any employee without pay or other compensation as punishment for disciplinary cause. The appointing authority must provide the employee with written notice of the suspension stating the reasons therefor, a copy of which shall be sent to the Commissioner of Personnel and Executive Director of the Personnel Board. In the case of an employee with status, such reasons shall be specific as to the statutory and/or rule violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. Such a suspension shall not exceed thirty (30) working days during any twelve (12) month period. The twelve (12) month period begins with the first day of the suspension. Any employee with status may appeal his suspension.

Section 10. Disciplinary Fines. The Transportation Cabinet may impose as a disciplinary measure a fine of not more than ten (10) days' pay to be computed on the basis of the employee's current salary. Disciplinary fines may not exceed ten (10) days' pay for each occurrence, and may not exceed a total of thirty (30) days' pay in any twelve (12) month period. The twelve (12) month period begins with the first day of the disciplinary fine. The employee shall be notified in writing by the cabinet of the reasons for the action, a copy of which shall be sent to the Commissioner of Personnel. In the case of an employee with status, such reasons shall be specific as to the statutory and/or regulatory violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. An employee with status may appeal the action. The effective date of a disciplinary fine shall be deemed to be the date the employee receives the notification required by this section.

Section 11. Written Reprimands. The Transportation Cabinet may give an employee a written reprimand as a single disciplinary measure or as a preliminary measure. The approval of the Executive Director, Office of Personnel Management, must be obtained prior to giving an employee a letter of reprimand. A copy of the written reprimand shall be placed in the employee's

personnel file in the cabinet and a copy shall be given to the employee. The employee shall be given the opportunity to reply in writing to the written reprimand and to include this reply in his personnel file with the written reprimand. The employee shall be informed of his right to reply at the time the written reprimand is given. A written reprimand, in and of itself, is not an appealable penalization and is not a basis for appeal. If an employee has not been charged with or has pending other disciplinary measures, the written reprimand may be removed from his personnel file after three (3) years from the date of the written reprimand.

Section 12. Separation and Disciplinary Actions for Non-Merit Employees. Employees appointed as seasonal, temporary, emergency or in other non-merit positions may be terminated without the right of appeal at any time while under such an appointment as they do not have status under the Merit System. This section does not pertain to employees who are serving their probationary period. In the event it becomes necessary to either suspend or terminate an employee serving under one of these appointments, the employee will be given a letter advising him of the effective date of the suspension or termination. Approval of the Executive Director, Office of Personnel Management, is required prior to effectuating the penalization. The letter of notification to the employee shall be prepared and signed by the Chief Highway District Engineer or the Executive Director of the Office of Personnel Management.

BETTY HAWKINS, Executive Director
FLOYD G. POORE, Secretary

APPROVED BY AGENCY: August 15, 1984

FILED WITH LRC: August 15, 1984 at noon

PUBLIC HEARING SCHEDULED: A public hearing will be held on this proposed administrative regulation on September 25, 1984 at 10 a.m., EDT, in the 4th floor conference room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by September 20, 1984 so notify Larry E. Moore, Assistant to the Secretary, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry Moore

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: NA

SPONSOR: Transportation

NOTE SUMMARY

LOCAL GOVERNMENT MANDATE: No

TYPE OF MANDATE: NA

LEVEL(S) OF IMPACT: NA

BUDGET UNIT(S) IMPACT: NA

FISCAL SUMMARY: NA

MEASURE'S PURPOSE: Provide guidelines for separations and disciplinary procedures.

PROVISION/MECHANICS: NA

FISCAL EXPLANATION: NA

TRANSPORTATION CABINET Personnel Management

600 KAR 1:050. Employee conduct and working hours.

RELATES TO: KRS Chapter 18A, 174.080

PURSUANT TO: KRS 13A.100, 13A.130, 174.080

NECESSITY AND FUNCTION: KRS 174.080 allows the Secretary of the Transportation Cabinet to promulgate administrative regulations. KRS 13A.130 and 13A.100 prohibit internal policy concerning disciplinary procedures within the jurisdiction of the Transportation Cabinet. This regulation is necessary to set out specific examples of conduct considered by the Transportation Cabinet as warranting the disciplinary measures provided in KRS Chapter 18A.

Section 1. General. (1) Except as otherwise provided in this regulation, the tenure of an employee with status shall be based on good behavior and satisfactory performance of his duties. If an employee becomes involved in delinquency, misconduct or incompetency, such employee shall be disciplined in accordance with the procedures established by this regulation.

(2) Employees of the Transportation Cabinet are to conduct themselves in such a manner that the work of the Transportation Cabinet is efficiently and effectively accomplished. Employees shall be courteous and prompt in their dealings with both their fellow employees and members of the public with whom they come in contact. Employees shall refrain from any activity which could cause embarrassment to or reflect adversely on the Commonwealth.

Section 2. Illegal and Prohibited Conduct on the Job. While on the job employees are prohibited from engaging in any conduct which involves, or could be construed as involving, the violation of the criminal or penal laws of the Commonwealth. Specific acts, which may or may not be included in the above prohibition, which shall be prohibited include, but are not limited to, the following:

(1) Appearing on the job manifestly under the influence of alcohol, or a controlled substance, or other intoxicating substances, not therapeutically administered, to the degree that the employee may endanger himself or other persons or property, or unreasonably annoy persons in his vicinity.

This includes drinking of intoxicating beverages on the job or the taking of a controlled substance not therapeutically administered, or working while under the influence of an intoxicating substance not therapeutically administered.

(2) Engaging in immoral acts, or immoral conduct while on the job.

(3) Striking or assaulting a fellow employee or member of the public while on the job.

(4) Misappropriation of state funds or property.

(5) Driving of motor vehicles in a reckless or irresponsible manner while on the job.

(6) The carrying of firearms, even though the firearm is exposed, by any employee at any time (on-duty or off-duty) on state controlled properties unless expressly authorized in the performance of an employee's official duty. Request for authorization to carry firearms in an official capacity must be made to the Executive Director, Office of Personnel Management. In the event a firearm is discharged on state property, whether authorized or unauthorized, accidentally or purposely, a detailed report of the incident shall be forwarded to the Executive Director, Office of Personnel Management.

Section 3. Work Hours and Time-Keeping Procedure.

(1) The number of hours full-time employees in the Transportation Cabinet central office in Frankfort are required to work shall be uniform for all positions. The normal work hours shall be from 8 a.m. to 4:30 p.m., prevailing time, Monday through Friday, unless flextime has been approved in accordance with the provisions of this section.

(2) The work hours for the district office personnel shall be from 8 a.m. to 4:30 p.m., prevailing time, unless flextime has been approved in accordance with the provisions of this section. The Chief District Engineer of each Transportation Cabinet District office shall establish the work hours for all other district employees giving consideration to the requirements of their employment service.

(3) All employees of the Transportation Cabinet must sign a Daily Standard Time Roster provided in each work location. Employees assigned to field duty will maintain a daily time log using a time report form while away from their duty station. The completed time report will be turned in to the timekeeper when the employee returns to this duty station.

(4) Employees shall regularly and strictly observe the working hours required of them by the Transportation Cabinet. Habitual tardiness or absence from work stations shall constitute grounds for suspension or dismissal.

(5) With the approval of the appropriate commissioner or office head, a division, district, or office may utilize flextime in accordance with the following procedures:

(a) If a division, district, or office is authorized to use flextime, every employee in the division, district, or office may be allowed to use flextime.

(b) Flextime hours must be staggered at the discretion of the office head, division director or chief district engineer to insure coverage of all sections during the normal prevailing work hours—8 a.m. to 4:30 p.m.

(c) Employees must begin and end work on the hour or half-hour.

(d) Employees may not be scheduled to begin work later than 9:00 a.m. or end work earlier than 3:00 p.m.

(e) Lunch hours may be one-half ($\frac{1}{2}$) hour, one (1) hour, or one and one-half ($1\frac{1}{2}$) hours in length.

(f) Salaried employees must be scheduled to work seven and one-half ($7\frac{1}{2}$) hours/day. Hourly employees must be scheduled to work eight (8) hours/day.

(g) The earliest scheduled time to begin work is 7:00 a.m. The latest scheduled time to end work is 5:30 p.m.

(h) A supervisor may be required during all hours. This will be left to the discretion of the office head, division director, or chief district engineer.

(i) Duration of flextime schedule. An employee may only change his/her working hours every three (3) months. Approval of the office head, division director, or chief district engineer is necessary.

(j) Once an employee's flextime hours have been set, the employee cannot change the hours for three (3) months. The office head, division director, or chief district engineer may stop flextime when necessary or if abuse of flextime occurs.

(k) Division directors and above cannot participate in flextime hours.

Section 4. Outside Employment. Employees shall not engage in any outside employment which would interfere with the performance of the employee's official duties and/or result in, or could reasonably be construed by others as involving a conflict of interest between the private interests of the employee and his official duties and responsibilities. Prior to engaging in any form of outside employment, an employee must obtain the approval of his immediate supervisor. The immediate supervisor shall not approve any request which would:

(1) Interfere with the efficient performance of the employee's official duties; or

(2) Bring discredit upon, or cause criticism of state government or the cabinet; or

(3) Reasonably result in, or reasonably be construed by others as involving, a conflict of interest, between the private interest of the employee and his official duties and responsibilities.

Section 5. Conflict of Interest. (1) General. Because of the nature of the trust placed in them by the citizens of the state, Transportation Cabinet employees must exercise special care to insure that their personal conduct is above reproach. Employees shall avoid conduct which could reasonably result in, or could reasonably be construed as involving, a conflict of interest of the employee and his official duties and responsibilities.

(2) Financial activities, compensation and gratuities. No employee shall solicit, accept, or agree to accept, directly or indirectly, anything of economic value as a gift, gratuity, or favor from any person, corporation, public agency, or group, which might reasonably be interpreted by others as being of such nature that it could affect the impartial performance of his duties. Although under the foregoing criteria, the acceptance of any gift, gratuity, or favor directly or indirectly affecting an employee's official responsibility would be clearly adverse to the public interest, this need not preclude the exchange of usual social courtesies which are entirely free from any improper or embarrassing implications. An employee may not:

(a) Have financial interests that conflict or may reasonably be construed by others to conflict with his responsibilities and duties as a cabinet employee; or

(b) Engage in, directly or indirectly, financial transactions as a result of, or primarily relying upon, information obtained through his employment. Aside from these restrictions, an employee is free to engage in lawful financial transactions to the same extent as any other citizen.

(3) Real estate activities. The Transportation Cabinet must necessarily buy real estate to use as right-of-way for

highways. Therefore, it is important that employees of the Kentucky Transportation Cabinet be extremely careful that their personal real estate transactions neither constitute a conflict of interest nor give the appearance to the public of constituting a conflict of interest. An employee in doubt as to whether a contemplated real estate transaction of personal service in the real estate field constitutes a conflict of interest, should ask the Director, Division of Right-of-Way, for an interpretation. No employee of the Kentucky Transportation Cabinet shall:

(a) Purchase, attempt to purchase, or offer to purchase any real property or any improvements which are to be removed from any real property on the route or in close proximity to any highway project where right-of-way is to be acquired, is being acquired, or has been recently acquired.

(b) Act as agent for, or offer to act as agent for, the sale of any property in close proximity to any highway project where right-of-way is to be acquired, is being acquired, or has been recently acquired.

(c) Make any appraisal, either for compensation or gratuity, of any property in the path of any highway construction project or in close proximity thereto for any person, firm, or corporation, other than for the Transportation Cabinet.

(d) Make any appraisal or provide any service for any person, firm, or corporation that provides service to, sells products to, or in any other manner does business with the Kentucky Transportation Cabinet if such appraisal or service, or the compensation resulting therefrom, could reasonably be construed as constituting a conflict of interest.

(e) Make any appraisal for, provide any service to or accept any compensation from any realtor, broker, appraiser, attorney, or other person, firm, or corporation providing personal services to the Kentucky Transportation Cabinet in the field of appraising, negotiation, or examining titles. This restriction shall also apply to those persons, firms and corporations who have in their recent past provided or may reasonably be expected in the future to provide such services to the Kentucky Transportation Cabinet.

(f) No supervisor may authorize any employee to make appraisals or engage in any other outside activity for profit unless that employee is performing his normal cabinet duties in a thoroughly satisfactory manner and in all instances recognizes and practices a "Transportation Cabinet comes first" policy.

(4) Inconsistent, incompatible, or in-conflict activities. Transportation Cabinet personnel officers and employees shall not engage in any activity or enterprise which is inconsistent, incompatible, or in conflict with their assigned duties and responsibilities or with their duties, functions, and responsibilities of the cabinet office, division, district, or unit for which they are working. An activity or enterprise is deemed incompatible, inconsistent, or in conflict which involves:

(a) The use of state time, facilities, equipment, and supplies for private gain or advantage.

(b) The receipt or acceptance of money or any other type of consideration from anyone other than the state for the performance of an act which would be required or would be expected to be rendered during the regular course and hours of employment or a fulfillment of duties and responsibilities as a cabinet employee.

(c) The performance of an act, other than in the capacity as a cabinet employee, which may later be directly or in-

directly subject to the control, inspection, review, audit, or enforcement by the employee or the cabinet unit to which he may be working.

(d) The soliciting or accepting of personal loans or money or property from any person, other than a bank or other financial institution, who does business with or performs services for the cabinet or any division thereof. This policy includes contractual and contractual business and services relationships.

(e) The providing of confidential information to any person or persons to whom the issuance of such information has not been authorized by the cabinet.

(f) The providing of names of Transportation Cabinet personnel for a mailing list from office records unless specific authorization is received from the Office of Personnel Management.

Section 6. Disciplinary Action. Violation of any of the provisions of this regulation shall constitute grounds for suspension or dismissal from the Transportation Cabinet.

BETTY HAWKINS, Executive Director

FLOYD G. POORE, Secretary

APPROVED BY AGENCY: August 15, 1984

FILED WITH I.R.C.: August 15, 1984 at noon

PUBLIC HEARING SCHEDULED: A public hearing will be held on this proposed administrative regulation on September 25, 1984 at 10 a.m., EDT, in the 4th floor conference room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by September 20, 1984 so notify Larry E. Moore, Assistant to the Secretary, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry Moore

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: NA
 SPONSOR: Transportation
 NOTE SUMMARY
 LOCAL GOVERNMENT MANDATE: NA
 TYPE OF MANDATE: NA
 LEVEL(S) OF IMPACT: NA
 BUDGET UNIT(S) IMPACT: NA
 FISCAL SUMMARY: NA
 MEASURE'S PURPOSE: States policy regarding employee conduct and working hours.
 PROVISION/MECHANICS: NA
 FISCAL EXPLANATION: NA

TRANSPORTATION CABINET
 Department of Administrative Services
 Division of Management Services

600 KAR 1:060. Safety hard hat procedure.

RELATES TO: KRS 338.051, 338.061

PURSUANT TO: KRS 12.040(1), 174.035, 174.080

NECESSITY AND FUNCTION: The function of this proposed administrative regulation is to implement the performance of the powers, duties and functions of the Transportation Cabinet's Employee Safety Program in conjunction with administrative regulations promulgated by the Kentucky Occupational and Health Safety Standards Board.

Section 1. An approved safety hat shall be worn by all employees in all work areas except inside buildings or inside cabin closed vehicles or vehicles operated in an inside area where there is no exposure to falling or flying objects.

Section 2. Any employee who fails to adhere to the requirements of this administrative regulation or any safety administrative regulation promulgated by the Kentucky Occupational Safety and Health Standards Board pursuant to KRS 338.051 and KRS 338.061 is subject to disciplinary action.

ROGER COLE, Commissioner
 FLOYD G. POORE, Secretary

APPROVED BY AGENCY: August 14, 1984

FILED WITH LRC: August 15, 1984 at noon

PUBLIC HEARING SCHEDULED: A public hearing will be held on this proposed administrative regulation on September 28, 1984 at 9 a.m., EDT, in the 4th floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by September 20, 1984 so notify: Larry E. Moore, Assistant to the Secretary, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry Moore

(1) Type and number of entities affected: Transportation Cabinet employees.

(a) Direct and indirect costs or savings to those affected: No direct cost. Impossible to determine indirect cost.

1. First year: (See above.)

2. Continuing costs or savings: (See above.)

3. Additional factors increasing or decreasing costs (note any effects upon competition): NA

(b) Reporting and paperwork requirements: None.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: NA

2. Continuing costs or savings: Continuing costs consists of the replacement costs of hard hats. Savings in man hours worked as a result of preventing employees injuries.

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: NA

(3) Assessment of anticipated effect on state and local revenues: NA

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative would be no requirement to wear hats. Rejected to lessen head injuries.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict, though this regulation extends requirements of KOSHA.

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA

(6) Any additional information or comments: None.

Tiering:

Was tiering applied? No. No tiering required, the proposed regulation applies to all Transportation Cabinet employees.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Safety hard hat regulations

SPONSOR: Transportation Cabinet

NOTE SUMMARY

LOCAL GOVERNMENT MANDATE:

TYPE OF MANDATE:

LEVEL(S) OF IMPACT:

BUDGET UNIT(S) IMPACT:

FISCAL SUMMARY:

MEASURE'S PURPOSE: To promote employee safety.

PROVISION/MECHANICS: NA

FISCAL EXPLANATION: NA

PREPARER: Darrell Baker

TRANSPORTATION CABINET
 Department of Administrative Services
 Division of Transportation Services

600 KAR 1:070. Motor pool procedure.

RELATES TO: KRS Chapter 42, 44.050, 44.060

PURSUANT TO: KRS 12.025(1), 174.080, Senate Bills 179 and 236

NECESSITY AND FUNCTION: To implement the authority for administration of the state motor pool authorized by Executive Order 83-70 and confirmed by the 1984 General Assembly.

Section 1. In order to facilitate the administration and operation of the state motor pool, the Transportation Services Guidance Manual, as revised October 2, 1981, published by the Transportation Cabinet, a copy of which is open for public inspection during business hours in the office of the Commissioner of Administrative Services in the State Office Building, High Street, Frankfort, Kentucky 40622, is incorporated herein by reference and made part hereof as fully as if set forth in length. The manual incorporated by reference contains information on the use and assignment of vehicles, the operation and care of vehicles, and the use of Transportation credit cards.

Section 2. Any employee who fails to adhere to the requirements of this regulation is subject to disciplinary action.

ROGER COLE, Commissioner
FLOYD G. POORE, Secretary

APPROVED BY AGENCY: August 14, 1984

FILED WITH LRC: August 15, 1984 at noon

PUBLIC HEARING SCHEDULED: A public hearing will be held on this proposed administrative regulation on September 28, 1984 at 9 a.m., EDT, in the 4th floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by September 20, 1984 so notify: Larry E. Moore, Assistant to the Secretary, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry Moore

(1) Type and number of entities affected: All state agencies/employees using state vehicles are affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: Annual costs to user agencies is \$2,800,000.00. Savings are indeterminable, other agencies are not required to purchase or maintain vehicles.

2. Continuing costs or savings: (See above.)

3. Additional factors increasing or decreasing costs (note any effects upon competition): NA

(b) Reporting and paperwork requirements: User agencies report vehicle use to Transportation Cabinet.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Annual direct costs \$2,800,000.00 for purchase, maintenance, and fuel for motor pool. No indirect costs or savings.

1. First year: (See above.)

2. Continuing costs or savings: (See above.)

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: Computerized information on vehicle use and maintenance.

(3) Assessment of anticipated effect on state and local revenues: NA

(4) Assessment of alternative methods; reasons why alternatives were rejected: NA

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA

(6) Any additional information or comments: Results in more efficient administration of state motor pool, though Transportation Cabinet does not benefit monetarily.

Tiering:

Was tiering applied? No. Proposed regulations are applicable to all state agencies and persons utilizing motor pool vehicles.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: State Motor Pool Regulations

SPONSOR: Transportation Cabinet

NOTE SUMMARY

LOCAL GOVERNMENT MANDATE:

TYPE OF MANDATE:

LEVEL(S) OF IMPACT:

BUDGET UNIT(S) IMPACT:

FISCAL SUMMARY:

MEASURE'S PURPOSE: To administer the state motor pool.

PROVISION/MECHANICS: NA

FISCAL EXPLANATION: NA

PREPARER: Darrell Baker

MOTOR VEHICLE COMMISSION

605 KAR 1:150. Temporary sales location.

RELATES TO: KRS 190.010 to 190.080

PURSUANT TO: KRS 190.020, 190.073

NECESSITY AND FUNCTION: KRS 190.020 gives the Motor Vehicle Commission, under administrative regulations promulgated by it, supervisory authority over licenses issued by said commission pursuant to the provisions of KRS 190.010 to 190.080. KRS 190.073 mandates the Motor Vehicle Commission to promulgate such regulations. KRS 190.058(8) further mandates the commission to insure that the distribution and sale of new motor vehicles is conducted as provided by statute and under the commission's rules. KRS 190.015 states that it is the finding and declaration of the legislature that the commission regulate the distribution and sale of all vehicles within this state in order to promote the public interest and public welfare. A licensed motor vehicle dealer is required to have an established place of business at which the business of such a dealer may be lawfully carried on, and may change the location of his business only under the endorsement of change of location by the licensor (KRS 190.035 and 190.030(7) respectively). Modern marketing techniques and economic conditions have resulted in the growing use of temporary locations by a combination of dealers for limited sales promotions. The purpose of this regulation is to fulfill the requirements of KRS Chapter 190 which mandates the commission to supervise such sales and activities and to insure that all business conducted pursuant to a temporary sale location permit conforms to the requirements of the statutes and regulations governing the activities of motor vehicle dealers.

Section 1. The licensor may issue, at its discretion, for good cause shown, a temporary sale location permit for the purpose of a limited sales promotion as provided for herein.

Section 2. (1) Application for a temporary sale location permit must be made on forms provided by the licensor and must be filed with the licensor a minimum of ten (10) days before the next regularly scheduled meeting of the Motor Vehicle Commission before the requested permit period. Application shall be made by the motor vehicle dealer licensees participating.

(2) The application for a temporary sale location permit shall contain the following information:

(a) The names and addresses of all participating licensed dealers;

(b) The inclusive dates of the proposed temporary sale activity;

(c) The location of the proposed temporary sale activity;

(d) Proof of insurance coverage on the proposed temporary sale premises, of the same type as required by KRS 190.033, effective for the length of the proposed temporary sale activity;

(e) A lease or other written memorandum signed by the owner of the property upon which the temporary sale ac-

tivity is to occur, evidencing said owner's permission for the proposed temporary sale activity to occur.

(f) A statement signed by the proper local official showing that the proposed temporary sale activity may be lawfully carried on in accordance with the terms of all applicable building codes, zoning and other land use regulatory ordinances.

Section 3. The temporary sale location permit shall be issued only to two (2) or more licensed motor vehicle dealers who both shall be licensed in the same municipality or county. The permit shall state upon its face the duration of its validity which in no event shall exceed five (5) successive days, the location for which it is issued and the names of the participating licensed dealers.

Section 4. The temporary sale location permit shall authorize the participating motor vehicle dealers to engage in the sales activity for which they are licensed, at a location other than their respective established place of business only in the municipality or county of their established place of business for the duration of the permit. The use of the permit provided for herein shall be restricted in any area where utilization of the permit without the permission of a franchised dealer would impose an unnecessary competitive environment between the franchised motor vehicle dealer and another franchised motor vehicle dealer whose permanent place of business is outside the franchised area, and who is a franchised dealer of the same line make.

Section 5. All business conducted under a temporary sale location permit must conform to the requirements of the statutes and regulation governing the activities of motor vehicle dealer licensees.

Section 6. The fee for a temporary sale location permit shall be \$100 per participating dealer.

JAMES O. BUTTS, Chairman

APPROVED BY AGENCY: August 10, 1984

FILED WITH LRC: August 15, 1984 at 12 Noon

PUBLIC HEARING SCHEDULED: A public hearing on this proposed administrative regulation has been scheduled for September 21, 1984 at 10 a.m., local prevailing time, at the office of the Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky. Persons interested in attending this public hearing shall, at least five (5) days prior thereto, contact in writing: David Garnett, Executive Director, Motor Vehicle Commission, 114 West Clinton Street, Frankfort, KY 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Garnett

(1) Type and number of entities affected: All Kentucky Motor Vehicle dealers, approximately 4500 in number. However, past experience has been that only 25-30 dealers participate in temporary sale site promotions per year.

(a) Direct and indirect costs or savings to those affected:

1. First year: The cost provided for in the regulation is \$100 per participating dealer, per sale.

2. Continuing costs or savings: See (1)(a)1, above

3. Additional factors increasing or decreasing costs (note any effects upon competition): A dealer is not limited in the number of temporary sale site promotions he may participate in per year. There are no other factors increasing or decreasing costs, and the only factors effecting competition are the requirements that such promotions are limited to two (2) or more licensed dealers and the prohibi-

tion against conducting such a sale outside of the county of their respective established places of business.

(b) Reporting and paperwork requirements: Each request or application for a temporary sale site permit must contain the following: names and addresses of all participating dealers; inclusive dates of the sale; proof of insurance coverage on the temporary sale premises; a lease or other written memorandum evidencing the permission of the owner of the sale premises to the activity; and a statement signed by the proper official stating that the activity would not conflict with any applicable zoning or land use regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal printing costs for the necessary forms, minimal processing costs for receiving and reviewing the requests.

2. Continuing costs or savings: See (2)(a)1, above

3. Additional factors increasing or decreasing costs: Since the proposed regulation gives the Motor Vehicle Commission discretionary power to approve a temporary sale site permit, possible appeals from an unfavorable review of the permit would be a factor as it would involve an increased cost to the commission for legal proceedings.

(b) Reporting and paperwork requirements: Processing permits and recordkeeping, only. The Motor Vehicle Commission would keep a permanent record of all requests received and all actions relating to that request subsequently taken. As the number of permits in any one calendar year heretofore has been no greater than ten (10), the reporting and paperwork requirements would be minimal.

(3) Assessment of anticipated effect on state and local revenues: Revenues from temporary sale site promotions, based on an estimate of 50 plus or minus dealers participating in such promotions per year, would be in the \$5,000 range annually.

(4) Assessment of alternative methods; reasons why alternatives were rejected: One alternative would be to confine dealers exclusively to their licensed place of business. However, modern marketing techniques, usual custom in the industry and current economic conditions indicating the desirability of temporary sale site promotions weigh against this alternative. The other alternative would be to place no restrictions whatsoever on this type of activity. However, the explicit finding of the General Assembly that the distribution and sale of vehicles within the state vitally affects the general economy of the state as well as the public interest and welfare, and that it is necessary to regulate motor vehicle dealers in order to prevent frauds, impositions and other abuses upon the citizens of Kentucky, as embodied in KRS 190.015, makes this latter alternative not desirable, either.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations or policies which pertain to motor vehicle dealer temporary sale site promotions.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. The proposed administrative regulation would effect all classes of motor vehicle dealers in a uniform manner; there is no disproportionate impact on the regulated entities.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 13:100. Emergency extension of certifications.

RELATES TO: KRS 211.964

PURSUANT TO: KRS 211.964

NECESSITY AND FUNCTION: KRS 211.964 was amended by 1984 House Bill 493 to delete the necessity for recertification examinations for emergency medical technicians and replaces that requirement with a requirement for in-service training and continuing education. This regulation is necessary to provide currently certified emergency medical technicians with the time necessary to comply with the provisions of the new amendments to KRS 211.964.

Section 1. The period of certification of emergency medical technicians whose certifications expire between July 1, 1984 to December 31, 1985 is hereby extended to December 31, 1985. Any certification as an emergency medical technician not falling within these dates is not affected by this regulation.

C. HERNANDEZ, M.D., Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: July 30, 1984

FILED WITH LRC: August 9, 1984 at noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following by September 17, 1984: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas A. Thompson

(1) Type and number of entities affected: Emergency Medical Technicians

(a) Direct and indirect costs or savings to those affected:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): Not applicable

(b) Reporting and paperwork requirements: Persons affected do not have to submit renewal applications until 31 December 1985

(2) Effects on the promulgating administrative body:

- (a) Direct and indirect costs or savings:
 1. First year:
 2. Continuing costs or savings:
 3. Additional factors increasing or decreasing costs: Permits time for persons affected to comply with new education requirements

(b) Reporting and paperwork requirements: Permits promulgating body to have time to design continuing education program required by HB 493

(3) Assessment of anticipated effect on state and local revenues: Will reduce state revenue slightly

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative would permit time for persons to get required education

(5) Identify any statute, administrative regulation or

government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. Regulation is applicable to all persons equally, no other entities are involved

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Emergency Extension of Certifications

SPONSOR: Cabinet for Human Resources

NOTE SUMMARY Extends period of certification for emergency medical technicians

LOCAL GOVERNMENT MANDATE: No

TYPE OF MANDATE:

LEVEL(S) OF IMPACT: City, County, Urban County Government

BUDGET UNIT(S) IMPACT:

FISCAL SUMMARY: Net Effect: The net impact of this regulation is to extend, at no charge to the certified person, the emergency medical technician certification of emergency medical technicians whose certificates expire from July 1, 1983, to December 31, 1985 until December 31, 1985 to permit them time to acquire course hours necessary for recertification under KRS 211.964.

MEASURE'S PURPOSE:

PROVISION/MECHANICS:

FISCAL EXPLANATION:

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 45:150. School sanitation.

RELATES TO: KRS 211.180, 212.210, 212.990

PURSUANT TO: KRS 194.050, 211.090

NECESSITY AND FUNCTION: KRS 211.180 and 212.210 authorizes the Cabinet for Human Resources to regulate certain public health matters including the detection, prevention, and control of communicable disease and health hazards relating to sanitation and safety in schools. This regulation establishes uniform standards for schools and includes sanitary standards for operation, inspections, and enforcement procedures necessary to insure a safe and sanitary environment.

Section 1. Citation of Regulation. This regulation may be cited as "The Kentucky School Sanitation Regulation."

Section 2. Definitions. The following definitions shall apply in the interpretation and enforcement of this regulation:

(1) "Cabinet" means the Cabinet for Human Resources, the local health departments having jurisdiction, and their duly designated representatives.

(2) "Local Board of Education" shall mean a duly elected or appointed Board, any private agency, or organization who operates, controls, or supervises a school or system of schools.

(3) "Person" means an individual, firm, partnership,

company, corporation, trustee, association, or any public or private entity owning or operating a school.

(4) "School" means any area, parcel, or tract of land on which facilities are established, maintained, or operated for educational purposes, including public, parochial, and private facilities enrolling students in any of the grades kindergarten through the twelfth (12) grade including vocational education facilities, but excluding day care facilities, and individuals teaching their own children. Privately operated facilities would include only those areas used for school purposes.

(5) "Semi-permanent school structure" means any school structure that is constructed off-site and transported to the school site and is intended to serve as temporary classroom or other facilities and not made a fixed portion of any existing school structure.

Section 3. Water Supply. (1) The water supply shall be potable and from an approved public supply of a municipality or water district, if available. In the event a public water supply of a municipality or a water district is not available, the supply for the school shall be developed and approved in accordance with applicable requirements of the Natural Resources and Environmental Protection Cabinet.

(2) The water supply shall be of adequate quantity and under sufficient pressure to permit unrestricted use.

(3) All drinking fountain installations shall meet the requirements of the State Plumbing Code and shall be maintained in proper working order with adequate pressure and in a clean sanitary condition. Provision shall be made so that small children can drink with ease. In lieu of water fountains portable water coolers may be used. Where portable drinking water containers are used, they shall be of easily cleanable construction, kept securely closed and so designed that water may be withdrawn from the container only by water tap or faucet and shall be maintained in a sanitary condition.

(4) One (1) fountain per seventy-five (75) students or fraction thereof shall be provided. If paper drinking cups are used, they shall be stored and dispensed in a sanitary manner and discarded after use. Common drinking cups are prohibited.

Section 4. Sewage and Solid Waste Disposal. (1) All sewage and liquid waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage is not available, disposal shall be made into a private system designed, constructed, and operated in accordance with the requirements of the cabinet and the Natural Resources and Environmental Protection Cabinet.

(2) All plumbing shall comply with the State Plumbing Code and shall be designed and installed to prevent contamination of the water supply through cross-connections and backsiphonage from fixtures.

(3) All private sewage systems shall be operated in such a manner as to not create a nuisance or possible hazard to public health.

(4) All waste paper and solid waste shall be disposed of in such a manner as not to create a health or safety hazard.

(5) Containers shall be provided in all classrooms and hallways for storage of solid waste. All bulk solid waste shall be stored in containers, adequate in number, with tight-fitting lids. All bulk solid waste storage areas shall be so constructed and maintained as to prevent the entry and harborage of insects, rodents, and other vermin. All solid waste containers shall be of easily cleanable construction, kept clean and in good repair.

Section 5. Restroom Facilities. (1) All schools shall provide restroom facilities in accordance with the requirements of the State Plumbing Code.

(2) All restrooms, locker rooms, and toilet, shower and handwashing fixtures shall be maintained in a clean, sanitary condition.

(3) All restroom and locker room floors, walls, toilet partitions, ceilings, windows, and fixtures shall be maintained in good repair. Floors shall be of impervious construction; however, in dressing room areas only, carpeted floors may be provided if indoor-outdoor type carpeting is used.

(4) All restrooms and locker rooms shall be well lighted and ventilated to the outside air. A minimum of twenty (20) footcandles of light shall be provided in all restrooms and locker rooms as measured at a height of thirty (30) inches above the floor.

(5) An ample supply of toilet tissue and soap shall be provided. Disposable paper towels, cloth roll-type dispenser towels, or electric hand-drying devices shall be provided. Easily cleanable waste receptacles shall be provided in each restroom and locker room and shall be kept clean and in good repair. Waste receptacles shall be of covered-type design in all restrooms and locker rooms for female teachers and female students in grades seven (7) and above.

(6) All handwashing and shower facilities shall be supplied with hot and cold or tempered water under pressure. Temperature and pressure control devices shall be installed on all shower facilities in accordance to the requirements of the State Plumbing Code.

(7) All windows used for room ventilation in restrooms and locker rooms shall be screened to prevent the entry of insects and other vermin. All restrooms and locker rooms in schools without central heating and air-conditioning or other closed-environment type heating, ventilation, and air-conditioning systems shall have self-closing doors. Schools with less than ten (10) students shall not be required to have self-closing doors. In those schools where closed-environment type HVAC systems are provided, self-closing doors are not required if effective odor and insect entry control is demonstrated. In school restroom and locker room facilities used by small children, any self-closing devices on all doors shall be adjusted to provide closure without presenting a safety hazard to students.

Section 6. Lighting. (1) All school classrooms, study rooms, industrial arts shops, gymnasiums, enclosed swimming pools, auditoriums, stairways, and hallways shall be adequately lighted. All lighting shall be so installed so that glare will be eliminated. Illumination levels as listed below shall be provided as measured at a height of thirty (30) inches above the floor.

Task or Area	Footcandle Levels
Storage rooms	10
Hallways, stairways, auditoriums (during entry and exit)	20
General classrooms, gymnasiums, and enclosed swimming pools	50

In certain areas, such as at industrial arts work benches, power tool locations, welding, and foundry locations, art work benches, home economics kitchens, and laboratories, additional spot illumination shall be provided if necessary to maintain adequate lighting especially where safety hazards are present.

(2) Windows, shades, and light fixtures shall be kept

clean and in good repair at all times when school is in session.

Section 7. Building, Heating and Ventilation. (1) All walls, ceilings, floors, furniture, drapes, curtains, and blinds shall be kept in good repair.

(2) All floors shall be kept clean and free of litter. All walls, ceilings, furniture, drapes, curtains, and blinds shall be kept clean. All floors shall be cleaned using dustless methods. Special attention shall be given to maintain floor areas around drinking fountains and toilet and hand-washing facilities free of water spillage.

(3) Heating systems shall maintain a minimum temperature of sixty-eight (68) degrees Fahrenheit in classrooms and libraries. Registers, ducts, heating units, or panels shall be located as to maintain a uniform temperature throughout. All heating equipment shall be so designed, constructed, and installed to eliminate exposure of students to contact with heated surfaces and conform to the State Fire Marshal's requirements. Sufficient ventilation shall be provided to assure adequate fresh air.

(4) School buildings shall be maintained free of insect, or rodent harborage and infestation. Extermination methods and other measures to control insects and rodents shall be in accordance with applicable state laws and regulations.

(5) Schools with ten (10) or more students shall provide sufficient storage space for outer clothing, play equipment, school supplies, student's sack lunches, etc. This space shall be easily accessible, well lighted, ventilated and be designed, constructed, and maintained to reduce fire hazards.

(6) Adequate storage space shall be provided for the storage of janitorial supplies and combustible or poisonous materials and shall be kept locked at all times when not under direct supervision by maintenance staff or faculty. All janitorial or other supplies of a poisonous, caustic, or combustible nature shall be stored in the original container or, if dispensed from bulk containers, only in properly identified containers designed for such use. All poisonous, caustic, and combustible materials shall be stored in a area separate and apart from food products. The use of soft drink or other food or drink containers for storage of toxic materials is expressly prohibited.

Section 8. Safety. (1) All school buildings shall have approved-type fire extinguishers provided of sufficient number and fire rating type as determined by the State Fire Marshal or local fire departments. All exists shall comply with the requirements of the State Fire Marshal.

(2) Each school building shall have adequate first aid material available and easily accessible and shall be equipped with the following items:

- (a) Compresses and bandages:
 - 1. One (1) inch compress on adhesive.
 - 2. Assorted sterile bandage compresses in individual packages.
 - 3. Triangular bandages. (2 x 2) and (4 x 4)
 - 4. Sterile gauze in individual packages of about one (1) square yard one (1) inch and two (2) inch rolled.
- (b) Wire or thin board splints.
- (c) Adhesive tape.
- (d) Scissors.
- (e) Forceps (two (2) inch splinter).
- (f) Toothpicks.
- (g) Paper cups.
- (h) Iodine (mild).

- (i) Aromatic spirits of ammonia.
- (j) Thermometer.
- (k) Soap.
- (l) Vaseline.

A current edition of the Red Cross First Aid Manual shall be available. The principal, head teacher, or a designated faculty member shall possess current, valid certification in the Red Cross Multi-Media or Standard First Aid courses so as to render trained aid in case of injury.

(3) All play areas shall be designed, landscaped, and protected so as to provide a safe place for children to play. There shall be no obstructions in the area, and the ground shall be well drained and relatively level. Wells, cisterns, sewage treatment plants, and other open pits shall be fenced, have securely sealed tops, or otherwise be suitably protected to prevent safety hazards to students.

(4) All playground equipment shall be designed and constructed for heavy usage and shall be maintained in good repair and in safe condition. Any playground equipment found to be in defective condition which presents a safety hazard shall be immediately dismantled or otherwise rendered inaccessible to students until it is repaired or replaced. The electrical system, wiring, fixtures, and equipment shall be designed, constructed, installed, and maintained in accordance with the National Electrical Code and other applicable codes and regulations. The use of spliced electrical extension cords or other non-approved electrical wiring, fixtures, or equipment is strictly prohibited. Buildings and equipment shall be maintained in such a manner as to eliminate potential danger from holes, glass, splinters, sharp projections, and other hazardous conditions.

(5) All school buses shall be maintained clean, free of litter and dust, and free of sharp projections or other safety hazards in the entrance and interior seating area.

Section 9. Inspection of Schools. (1) At least once each six (6) months, the cabinet shall inspect each school and shall make additional inspections and reinspections as are necessary for the enforcement of this regulation.

(2) Whenever a representative of the cabinet makes an inspection of a school, he shall record his findings on an official cabinet inspection report form and provide the principal or head teacher with a copy. The inspection report shall:

- (a) Set forth the specific violation(s) found;
- (b) Establish a specific and reasonable period of time for the correction of the violation(s) found;
- (c) State that failure to comply with any notice issued in accordance with the provisions of this regulation may result in further action being taken; and
- (d) Advise the party inspected of its right to request a hearing before the local health department. The request shall be filed within ten (10) days of the completed inspection.

(3) Following a timely request for a hearing before the local health department, a hearing shall be conducted by the local health department at a time and place designated by it. Based upon the record of the hearing, the local health department shall make a written finding of fact and shall sustain, modify, or rescind any official notice or order appealed within thirty (30) days of the conclusion of the hearing. The hearing shall be recorded, but a transcript of the hearing need not be made unless the party requesting the transcription assumes the cost thereof and requests the transcription at the time of the hearing.

(4) Following inspections of school buildings and

premises required by this regulation, the local health department or the cabinet shall report suspected non-compliance with applicable requirements of other state agencies to those agencies.

Section 10. Existing Facilities and Equipment. Notwithstanding the other provisions of this regulation, facilities and equipment being used by existing schools on the effective date of this regulation, which do not fully meet the design and construction requirements of this regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, and create no health or safety hazard.

C. HERNANDEZ, M.D., Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 8, 1984

FILED WITH LRC: August 9, 1984 at noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held September 21, 1984, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, General Counsel, Office of the Counsel, Cabinet for Human Resources, 275 East Main Street (4-W), Frankfort, KY 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Irving Bell

(1) Type and number of entities affected: Public, parochial, and private schools for K-12 grades, approximately 1,600.

(a) Direct and indirect costs or savings to those affected: May be minor costs for new facilities to meet regulation, or existing facilities when remodelling.

1. First year: Unknown

2. Continuing costs or savings: Maintenance only

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change.

(3) Assessment of anticipated effect on state and local revenues: No change

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were to continue enforcement program under existing guidelines, or drop program. Guidelines had no force; no program option not in best interests of health and safety of school age children.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Overlaps slightly with State Building Code, Education Cabinet Laws and Regulations.

(a) Necessity of proposed regulation if in conflict: This regulation relates directly to health and safety concerns which are not specified in above mentioned laws and regulations.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, all affected agencies were consulted and were involved in final draft.

(6) Any additional information or comments: None

Tiering:

Was tiering applied? Yes

CABINET FOR HUMAN RESOURCES Department for Employment Services Division of Unemployment Insurance

904 KAR 5:041. Repeal.

RELATES TO: KRS 341.270(6)(e)

PURSUANT TO: KRS 13A.100, 194.050, 341.115

NECESSITY AND FUNCTION: 904 KAR 5:040 is being repealed because KRS 341.270(6)(e) sets the computation date for determining contribution rates for subject employers.

Section 1. 904 KAR 5:040, Computation date, is hereby repealed.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 14, 1984

FILED WITH LRC: August 15, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels

(1) Type and number of entities affected: None

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None.

(3) Assessment of anticipated effect on state and local revenues: None.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 341.270

(a) Necessity of proposed regulation if in conflict: None, regulation is being repealed.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: Merely repealing duplicative regulation.

Tiering:

Was tiering applied? No. No impact involved.

CABINET FOR HUMAN RESOURCES
 Department for Employment Services
 Division of Unemployment Insurance

904 KAR 5:211. Repeal.

RELATES TO: KRS 341.260, 341.270, 341.330, 341.530

PURSUANT TO: KRS 13A.100, 194.050, 341.115

NECESSITY AND FUNCTION: 904 KAR 5:210 is being repealed because the provisions of KRS 341.530(5) permitting voluntary contributions to reserve accounts expired on July 1, 1983.

Section 1. 904 KAR 5:210, Voluntary contributions to reserve account, is hereby repealed.

JAMES P. DANIELS, Commissioner
 E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 14, 1984

FILED WITH LRC: August 15, 1984 at Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None.

(3) Assessment of anticipated effect on state and local revenues: None.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. No impact involved; voluntary contributions no longer permitted.

CABINET FOR HUMAN RESOURCES
 Department for Social Services
 Division of Aging Services

905 KAR 8:070. Ombudsman Policy and Procedural Manual.

RELATES TO: KRS 205.201, 205.204

PURSUANT TO: KRS 194.050

NECESSITY AND FUNCTION: PL 89-93, "Older Americans Act" as amended, requires states to establish and operate, either directly or by contract, a long-term care ombudsman program to protect the rights of aged individuals. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law. The function of this regulation is to implement a statewide long-term care ombudsman program as required by federal law.

Section 1. Ombudsman Policy and Procedural Manual. The Cabinet for Human Resources, Department for Social Services, hereby incorporates by reference the Ombudsman Policy and Procedural Manual dated August 15, 1984. This manual sets forth the policies and procedures for the state ombudsman program as well as the designated district ombudsman. The Ombudsman Policy and Procedural Manual may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

ANNA GRACE DAY, Commissioner
 E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: August 15, 1984

FILED WITH LRC: August 15, 1984 at 12 Noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on September 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by September 16, 1984: Hughes Walker, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (c) Any additional information or comments:

Tiering:

Was tiering applied? No. All long term care ombudsman programs must follow the federal requirements.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the August 6-7, 1984 Meeting

(Subject to subcommittee approval at the September 10, 1984 meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Monday, August 6, 1984 at 2:00 p.m. and on Tuesday, August 7, 1984 at 10:00 a.m. in Room 103 of the Capitol Annex Building. Present were:

Members: Representative William T. Brinkley, Chairman; Senators Pat McCuiston, Bill Quinlan and Joe Lane Travis; Representatives Albert Robinson and Jim Bruce.

Guests: Dennis Conniff, Richard R. Hannan, Nature Preserves Commission; James L. Dickinson, Ken Hahn, Laura Keller, Hisham Saaid, Jim Villines, Natural Resources and Environmental Protection Cabinet; Gary Bale, Taylor N. Hollin, Charles D. Wade, Department of Education; Eugene D. Attkisson, Brian C. Gilpin, Department of Mines and Minerals; C. Joe Hutchison, Pam Johnson, Kentucky Retirement Systems; Bob Flynn, Linda Horton, Department of Local Government; Frank B. Sanning, Board of Ophthalmic Dispensers; Tom Edwards, Labor Cabinet; Edward A. Farris, Catherine Staib, Department of Alcoholic Beverage Control; Patrick Watts, Department of Insurance; Larry D. Stanley, Public Service Commission; Carl VanCleve, Department of Housing, Buildings and Construction; Linda Bowling, Marge Brock, Jennifer M. Bryson, John Clayton, Barbara Coleman, John P. Draper, Ked Fitzpatrick, Lynne Flynn, Charles C. Furr, Omar L. Greeman, Ryan M. Halloran, Alison Johnson, Richard D. King, Greg Lawther, Roger L. Mulloy, Patricia K. Nicol, M.D., Ishmael Preston, Jesse Rowe, Pat Russell, Joseph M. Schureck, Stan Smith, Bill Verbeten, Sarah J. Wilding, Frank J. Willey, Rob Williams, Dorothy Wilson, Larry Wilson, James F. Yonts, Cabinet for Human Resources; Greg Brotzge, Louisville Chamber of Commerce, Bill Caylor, Kentucky Coal Association, Andrew Cammack, Environmental Quality Commission, Lloyd R. Cress, Kentucky Oil and Gas Association; Charles Ray Dailey, Purchase Area Environmental Forum; Etta Ruth Kepp, Governor's Office for Policy and Management; Stanford Lampe, Atlantic Richfield Co.; Ellen M. Buchar, Mike Meyer, Julianne C. Morris, Louisville-Jefferson County Health Department; Herman D. Regan, Jr., Kenvirons, Inc.; Tony Sholar, Kentucky Chamber of Commerce.

LRC Staff: Susan Harding, Collie Marshall, Joe Hood, Gregory Karambellas, Chris Lilly, Paula Payne, Peggy Hyland and Carla Arnold.

Chairman Brinkley announced that a quorum was present and called the meeting to order. On motion of Representative Bruce, seconded by Senator Quinlan, the minutes of the July 9-10, 1984 meeting were approved.

The Subcommittee directed the staff to prepare a letter to Governor Martha Layne Collins expressing their con-

cerns with problems that have arisen due to the implementation of House Bill 334 (KRS Chapter 13A).

In general discussion of the Natural Resources regulations, the Subcommittee objected to the regulations listed below and requested that the following statement of objections be attached in accordance with KRS 13A.290:

If the documents are to be used in administrative decisions relating to the issuance of permits, KRS Chapter 13A would not permit:

(1) Citation for "reference only;"

(2) A disclaimer of adoption; and

(3) Future selective use by the agency or use of additional documents or texts without adoption of same.

If the documents control or are criteria in the approval of permits, they must be incorporated and made part of the regulation.

In reviewing 401 KAR 5:200, the Subcommittee objected to the adoption of specified texts when the use of other available accepted standards or texts was precluded for no discernible valid reason. The Subcommittee felt that the Natural Resources and Environmental Protection Cabinet was unaware that it could not later permit the use of or select other texts, under this regulation, unless this regulation was amended.

Senator Travis stated that he was concerned with the incorporation by reference of administrative determinations or rulings in specific cases that could not be applied uniformly. These items were administrative decisions or rulings and not regulations of general applicability.

The Subcommittee therefore objects to the following regulations for the above listed reasons:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection

Division of Water

401 KAR 4:200. Documents and procedures incorporated by reference for the administration of the regulatory provisions of Kentucky's water resources law.

401 KAR 5:200. Documents incorporated by reference for water quality and wastewater treatment.

401 KAR 6:200. Documents incorporated by reference, relative to public and semi-public water supplies and swimming pools.

Division of Waste Management

401 KAR 30:070. Reference documents.

Division of Air Pollution

401 KAR 50:016. Policies incorporated by reference.

Surface Mining Reclamation and Enforcement

Strip Mining of Coal

405 KAR 1:015. Documents incorporated by reference.

Surface Effects of Underground Coal Mining

405 KAR 3:015. Documents incorporated by reference.

General Provisions

405 KAR 7:015. Documents incorporated by reference.

Oil Shale Operations

405 KAR 30:015. Documents incorporated by reference.

In discussion of the following regulation, the Subcommittee raised questions concerning the promulgation by agencies of regulations relating to personnel matters. The members felt that the agencies were not authorized to promulgate such regulations and that KRS Chapter 18A granted exclusive authority over these matters to the Commissioner of Personnel and the Personnel Board.

CABINET FOR HUMAN RESOURCES**Administration**

900 KAR 3:010. CHR personnel policies.

The Subcommittee had no objections to the following regulations:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**Nature Preserves Commission**

400 KAR 2:010. Definitions.

400 KAR 2:020. The Nature Preserves Commission.

400 KAR 2:030. Dedication of nature preserves and registration of natural areas.

400 KAR 2:040. Management, use, and protection of nature preserves.

400 KAR 2:050. Hearings and appeals.

EDUCATION AND HUMANITIES CABINET**Department of Education****Administration and Finance**

702 KAR 1:005. Textbook program plan.

Pupil Personnel Services

703 KAR 2:050. Attendance; resident, non-resident.

Education for Exceptional Children

707 KAR 1:051. Exceptional children's programs.

707 KAR 1:055. Programs for home instruction and/or hospital instruction.

PUBLIC PROTECTION AND REGULATION CABINET**Department of Mines and Minerals****Division of Oil and Gas**

805 KAR 1:110. Underground injection control.

KENTUCKY EMPLOYEES' RETIREMENT SYSTEMS**General Rules**

105 KAR 1:010. Contributions and interest rates.

OFFICE OF THE GOVERNOR**Department of Local Government****Development Finance**

109 KAR 9:010. Area development fund.

FINANCE AND ADMINISTRATION CABINET**Division of Occupations and Professions****Board of Ophthalmic Dispensers**

201 KAR 13:040. Licensing; application, examination; temporary permit.

201 KAR 13:050. Apprentices.

LABOR CABINET**Department of Workplace Standards****Occupational Safety and Health**

803 KAR 2:020. Adoption of 29 CFR Part 1910.

PUBLIC PROTECTION AND REGULATION CABINET**Department of Alcoholic Beverage Control****Advertising Distilled Spirits and Wine**

804 KAR 1:110. Wine tastings.

Advertising Malt Beverages

804 KAR 2:005. Outside signs.

Licensing

804 KAR 4:240. Registration of brands.

Retail Premises

804 KAR 7:045. Convention center license.

Department of Insurance**Administration**

806 KAR 2:100. Disclosure of KRS 136.392 Surcharge. (The motion was made and seconded that the staff prepare a letter to Commissioner McCarty regarding the intent of the surcharge in this regulation and that this intent be included in the regulation.)

Trade Practices and Frauds

806 KAR 12:090. Unfair claims settlement practices. (With technical amendment)

Public Service Commission**Utilities**

807 KAR 5:011. Tariffs.

Department of Housing, Buildings and Construction**Plumbing**

815 KAR 20:070. Plumbing fixtures.

815 KAR 20:120. Water supply and distribution.

815 KAR 20:150. Inspection and tests.

CABINET FOR HUMAN RESOURCES**Office of Administrative Services****Administration**

900 KAR 1:011. Post-audit appeal procedures of programs and vendors of services with whom the Cabinet for Human Resources has contracted.

Office of the Ombudsman**Administration**

900 KAR 1:030. Ombudsman complaint review responsibilities.

900 KAR 1:040. Ombudsman guardianship responsibilities.

Department for Health Services**Vital Statistics**

901 KAR 5:050. Certified copies of certificate; fee.

Maternal and Child Health

902 KAR 4:060. Kentucky State Plan of Program Operations and Administration for the Special Supplemental Food Program for Women, Infants and Children (WIC).

902 KAR 4:070. Crippled children's services.

902 KAR 4:080. Disabled children's program.

902 KAR 4:090. Lead poisoning prevention. (With technical amendment)

Local Health Departments

902 KAR 8:030. Merit system for local health departments. (With technical amendment)

Hospitalization of Mentally Ill/Mentally Retarded

902 KAR 12:060. Per diem rate pursuant to the "Patient Liability Act of 1978."

902 KAR 12:070. "Means test" pursuant to the "Patient Liability Act of 1978."

Certificate of Need and Licensure

902 KAR 20:190. Rehabilitation agency services. (As amended)

Food and Cosmetics

902 KAR 45:130. Inspector's manual for state food and drug officials.

902 KAR 45:140. Retail food programs evaluation and standardization procedures.

Milk and Milk Products

902 KAR 50:010. Definitions for milk and milk products.

902 KAR 50:070. Standards of identity for milk and milk products.

902 KAR 50:090. Milk adulteration.

902 KAR 50:100. Grade A milk sanitation ratings.

902 KAR 50:110. Grade A milk and milk products standards.

Department for Social Insurance**Medical Assistance**

904 KAR 1:013. Payments for hospital inpatient services.

Public Assistance

904 KAR 2:016. Standards for need and amount; AFDC.

904 KAR 2:050. Time and manner of payments.

Food Stamp Program

904 KAR 3:020. Eligibility requirements.

904 KAR 3:035. Certification process.

Department for Employment Services**Unemployment Insurance**

904 KAR 5:260. Unemployment insurance procedures.

Research and Planning

904 KAR 6:040. Job Training Partnership Act.

Department for Social Services**Child Welfare**

905 KAR 1:170. Child abuse self-help groups.

905 KAR 1:180. DSS policy and procedures manual.

Spouse Abuse Shelters and Crisis Centers

905 KAR 5:010. Standards.

905 KAR 5:030. Matching formula for general funds.

Community Action Agencies

905 KAR 6:030. CSBG audit guide.

Children's Residential Services

905 KAR 7:020. Procedural manual for day treatment programs. (With technical amendment)

905 KAR 7:050. Group home procedural manual.

905 KAR 7:080. Children's treatment services facility manual.

905 KAR 7:090. Patient charges at children's treatment services.

Office of Inspector General

906 KAR 1:010. Policies and procedures pertaining to audits.

906 KAR 1:020. Inspection policies and procedures pertaining to licensing and regulation.

The following regulations were deferred at the agency's request:

EDUCATION AND HUMANITIES CABINET**Department of Education****Vocational Education**

705 KAR 2:030. Foundation program units.

CABINET FOR HUMAN RESOURCES**Certificate of Need and Licensure**

902 KAR 20:132. Certificate of need expenditure minimums.

The Subcommittee had no objections to the emergency regulations filed at this time.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection****Division of Water**

401 KAR 4:200E. Documents and procedures incorporated by reference for the administration of the regulatory provisions of Kentucky's water resources law.

401 KAR 5:200E. Documents incorporated by reference for water quality and wastewater treatment.

401 KAR 6:200E. Documents incorporated by reference, relative to public and semi-public water supplies and swimming pools.

Division of Waste Management

401 KAR 30:070E. Reference documents.

Division of Air Pollution

401 KAR 50:016E. Policies incorporated by reference.

Surface Mining Reclamation and Enforcement**Strip Mining of Coal**

405 KAR 1:015E. Documents incorporated by reference.

Surface Effects of Underground Coal Mining

405 KAR 3:015E. Documents incorporated by reference.

General Provisions

405 KAR 7:015E. Documents incorporated by reference.

Oil Shale Operations

405 KAR 30:015E. Documents incorporated by reference.

OFFICE OF THE GOVERNOR**Department of Local Government****Development Finance**

109 KAR 9:010E. Area development fund.

CABINET FOR HUMAN RESOURCES**Administration**

900 KAR 3:010E. CHR personnel policies.

900 KAR 1:011E. Post-audit appeal procedures of programs and vendors of services with whom the Cabinet for Human Resources has contracted.

Office of the Ombudsman**Administration**

900 KAR 1:030E. Ombudsman complaint review responsibilities.

900 KAR 1:040E. Ombudsman guardianship responsibilities.

Department for Health Services**Maternal and Child Health**

902 KAR 4:060E. Kentucky State Plan of Program Operations and Administration for the Special Supplemental Food Program for Women, Infants and Children (WIC).

902 KAR 4:070E. Crippled children's services.

902 KAR 4:080E. Disabled children's program.

902 KAR 4:090E. Lead poisoning prevention.

Local Health Departments

902 KAR 8:030E. Merit system for local health departments.

Hospitalization of Mentally Ill/Mentally Retarded

902 KAR 12:060E. Per diem rate pursuant to the "Patient Liability Act of 1978."

902 KAR 12:070E. "Means test" pursuant to the "Patient Liability Act of 1978."

Food and Cosmetics

902 KAR 45:130E. Inspector's manual for state food and drug officials.

902 KAR 45:140E. Retail food programs evaluation and standardization procedures.

Milk and Milk Products

902 KAR 50:090E. Milk adulteration.

902 KAR 50:100E. Grade A milk sanitation ratings.

Department for Social Insurance**Public Assistance**

904 KAR 2:016E. Standards for need and amount; AFDC.

Food Stamp Program

904 KAR 3:035E. Certification process.

Department for Social Services**Child Welfare**

905 KAR 1:170E. Child abuse self-help groups.

905 KAR 1:180E. DSS policy and procedures manual.

Spouse Abuse Shelters and Crisis Centers

905 KAR 5:030E. Matching formula for general funds.

Community Action Agencies

905 KAR 6:030E. CSBG audit guide.

Children's Residential Services

905 KAR 7:020E. Procedural manual for day treatment programs.

905 KAR 7:050E. Group home procedural manual.

905 KAR 7:080E. Children's treatment services facility manual.

905 KAR 7:090E. Patient charges at children's treatment services.

Office of Inspector General

906 KAR 1:010E. Policies and procedures pertaining to audits.

906 KAR 1:020E. Inspection policies and procedures pertaining to licensing and regulation.

The meeting was adjourned at noon on August 7, 1984 until September 10, 1984.

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